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Democratic Legitimacy and the European Citizens' Initiative: A recipe for disappointment and disaffection?

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List of Abbreviations

| | |
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| AFCO | European Parliament Committee on Constitutional Affairs |
| CIVEX | Commission for Citizenship, Governance, Institutional and External Affairs |
| CoR | Committee of the Regions |
| CSO | Civil Society Organisation |
| EESC | European Economic and Social Committee |
| ECAS | European Citizen Action Service |
| ECI | European Citizens' Initiative |
| EFVI | European Free Vaping Initiative |
| IGC | Intergovernmental Conference |
| EPSU | European Public Services Union |
| ETUC | European Trade Union Confederation |
| MEET | Movement towards a European Education Trust |
| MEP | Member of the European Parliament |
| OLP | Ordinary Legislative Procedure |
| TTIP | Trans-Atlantic Trade and Investment Partnership |
| TEU | Treaty on European Union |
| UBI | Unconditional Basic Income |

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I would like to dedicate this thesis to my grandparents, who, each in their own way, taught me the value of asking questions and the joy of learning the answers. I wish they were all here to see it.

Declaration

I confirm this thesis is entirely my own work and it has not been submitted for the award of a degree at any other university.

Abstract

The European Union has long been argued to suffer from a deficit of democratic legitimacy. One recent innovation introduced with the intention of addressing this deficit is the European Citizens' Initiative (ECI), a means by which 1 million EU citizens can ask the European Commission to propose new legislation. In 2015, three years following its introduction, opinions on the performance of the ECI amongst EU politicians, journalists and campaigners are tinged with disappointment and disaffection. This thesis asks to what extent the sceptics are warranted in their frustrations towards the ECI or whether it is able to live up to the high expectations of the EU institutions at the time of its introduction. By drawing analytic criteria directly from the theory of democratic legitimacy and applying them in a systemic manner, I address how the ECI can, in principle, and has thus far, in practice, affected the EU in terms of inclusion in policy making, impacts on policy outcomes, and the pursuit of normatively justifiable and salient issues. Using case studies of the first four ECI campaigns registered by the Commission, I argue that the ECI has the potential to contribute to the inclusion of EU policy making through the activation and formation of multiple, issue-specific *demos* in the EU, which can form the basis of democratic legitimacy. I also find the ECI capable of producing tangible impacts on EU, national and local policy, though mostly in ways unintended by the Regulation underpinning the instrument. Effects on inclusion and impacts are, furthermore, affected by the salience of the issues the ECI is used to pursue, and the normative justifiability of the issue in terms of how it upholds the political equality of the people can directly enhance the EU's democratic legitimacy. Given these findings, it is concluded that the ECI, despite the current disappointment of many commentators, has scope for unanticipated positive, though limited, impact on the EU's democratic legitimacy.

Chapter 1: Introduction

Three years following the launch of the European Citizens' Initiative (ECI), the regulation underpinning it came under review. The ECI was introduced in the European Union (EU) in 2012 as a means to increase the democratic legitimacy of EU policy making by enabling European citizens to take a more direct role in the legislative process. In 2015, based on experiences of the ECI in its first three years, the EU's institutions were invited to contribute their opinions to the Commission's review process. On behalf of the European Parliament, the Constitutional Affairs Committee (AFCO) prepared a report stating its perspective on the ECI. Following the first reading of the AFCO report, a series of amendments were tabled by Members of the European Parliament (MEPs). One in particular stood out. Dutch MEP Vicky Maeijer, of the Parliament's far-right Europe of Nations and Freedom Group, proposed the following amendment to the Parliament's opinion on the ECI: "[the European Parliament] considers, therefore, that the European Citizens' Initiative is a sham" (Schöpflin 2015a, p.10).

At this critical time in the lifespan of the ECI, Maeijer's sceptical sentiment is widespread amongst politicians, stakeholders and commentators. The numerous proposed amendments to the European Parliament's report that signalled the disenchantment and frustration of MEPs spanned the political spectrum, indicating that Maeijer's contribution is not solely a consequence of the Eurosceptic beliefs of her party (Schöpflin 2015a). The Commission for Citizenship, Governance, Institutional and External Affairs (CIVEX) of the Committee of the Regions (CoR) lamented the Commission's initial report of the review process and declared the ECI "a democratic revolution that never took place" (2015, p.5). A contributory note from the European Council Presidency referred to the ECI's shortcomings, "which risked creating false expectations for citizens and triggering a backlash against the EU" (Council of the European Union 2015, p.3). The Chair of the Initiative and Referendum Institute Europe remarked "the setup around the ECI process ... has to be called a democratic scandal" (Kaufmann 2014,

p.108), and the organiser of one unsuccessful ECI campaign reflected on his experience and stated “it is really a waste of time” (Chauvet, interview). One sceptical European journalist declared: “This is the same old world in which the EU fails to live up to unrealistic expectations. The ECIs are a recipe for disappointment and disaffection – and the EU has already had enough of both” (Unknown 2014).

Whilst widespread, this attitude is not shared by all actors involved. The European Commission retains positivity regarding its role in the process, asserting that the ECI “has been fully implemented” (European Commission 2015g, p.14), and maintains that, despite some stumbling blocks in the first few years of implementation, “the Commission attaches utmost importance to the ECI and is fully committed to making this instrument work, so that it can fully achieve its potential” (2015g, p.2). When asked, a member of the Commission’s ECI Task Force said “[the ECI] works according to the Regulation as it stands at the moment, things are going ok” (ECI Task Force Member 2, interview). After being in place for three years, however, sentiments towards the ECI are, for the most part, characterised by dejection, despondence, disenchantment and frustration.

Such feelings of despair and disappointment can be directly contrasted with the buoyant optimism expressed towards the ECI prior to its launch and in its early days. Whilst the Commission maintains some of its upbeat attitude, in comparison to the way in which it introduced the ECI it can clearly be seen to have tempered its position. European Commission Vice President and Commissioner for Interinstitutional Relations and Administration, the Directorate General responsible for the ECI, Maroš Šefčovič, on many separate occasions exclaimed the ECI as: “a great boost for participatory democracy in Europe” (European Commission 2012b); “a real opportunity for us to reconnect with European citizens, to bridge that democratic divide” (Šefčovič 2012a) and “the first step on our way to European transnational e-democracy” (Šefčovič 2013a). Some MEPs were equally as optimistic about

the ECI's potential. Hungarian MEP Zita Gurmai referred to the ECI as "a unique opportunity to breathe new life into our European democracy" (European Parliament 2010) and ex-European Parliament President Martin Schulz proclaimed the day that the ECI was launched as "a great day for real participatory democracy" and referred to the ECI as "a wonderful thing" (European Parliament 2012). These claims illustrate the EU institutions' early buoyant confidence in the potential of this mechanism to positively impact upon the democratic legitimacy of the EU: a considerably different attitude to that portrayed three years later.

Research questions

The contrast between the optimism of the early days of the ECI and the pessimism of three years later raises the central research question of this thesis: what exactly *is* the potential impact of this instrument on the democratic legitimacy of the EU? To what extent are the sceptics of 2015 warranted in their frustration and despair? Or does the ECI have the potential to live up to the high expectations the EU institutions had of it around the time of its launch? Is the technological innovation analogy of Loader and Mercea, that there are "many instances of the fanfare of transformative rhetoric which accompan[y] the emergence of 'new' innovations and which is then often followed by disappointment and more measured appraisal" (Loader & Mercea 2011, p.758), appropriate to this case?

This central question raises several further questions that must be addressed within the thesis in order to provide an adequate answer. First, what is meant by democratic legitimacy? By legitimacy I am referring to the legitimate exercise of political authority, and not legitimacy in any other sense. A democratically legitimate political system can be conceptualised as a system that recognises the people as the appropriate source of authority, considers the recognition of political equality to be the appropriate ends of government, and gives the people the opportunity to consent to the exercise of their own authority and hence expects them to accept its outcomes.

Depictions of legitimate authority often begin with the definition provided by Weber. That is, authority is legitimate as and when those subject to the authority perceive it to be so. Weber identified three different claims to legitimate authority: traditional, charismatic and rational-legal, and the extent to which these claims were accepted denoted the extent to which the authority was legitimate (Parkinson 2006, p.22). The primary element of this conception of legitimacy is therefore belief, or public approval (Rehfeld 2005, p.15; Beetham 1991, p.6). However, Weber's definition is open to significant criticism. Beetham described Weber's influence on the topic of legitimacy an "unqualified disaster" (1991, p.8). The basis of the criticism comes from Weber's emphasis on belief, which Beetham likens to a form of public relations. Barker also criticises Weber's definition of legitimacy for its overemphasis on belief, stating that "to describe as legitimate a regime which its subjects believe to be legitimate is to empty the term of any moral content, which content it ought to have" (Barker 2001, p.10). What is missing, therefore, is a moral basis, a normative standard against which claims to legitimacy can be tested: "a given power relationship is not legitimate because people believe in its legitimacy, but because it can be justified in terms of their beliefs" (Beetham 1991, p.11).

Beetham thus describes a moral grounding for legitimate political authority. For Beetham, power is legitimate when it is "acquired and exercised according to justifiable rules" and consented to by the subordinate (1991, p.3). The rules must be justified according to two norms, those of the appropriate source of political authority and the proper ends of government. If we recognise that all individuals are, in political terms at least, equal, and all are equally fallible (Weale 2007, p.68), the collective is most likely to consider the appropriate source of authority to be themselves, or, collectively, 'the people' (Beetham 1991, p.75). This is, therefore, democracy. Democracy is the most legitimate form of political system because "only a democratic government can foster a relatively high degree of political equality" (Dahl 1998, p.56). Indeed, as Dahl states, "in the current world there are not many alternatives to democracy as a source of legitimacy" (1999, p.32).

Realising political equality emphasises that democratic legitimacy is not just about the procedure of reaching political outcomes, but the substance of the outcomes is also important. Considering Beetham's second element of normative justifiability, the proper ends of government, it is apparent that illegitimate outcomes, in terms of those that fail to recognise or undermine the intrinsic equality of the people, can emerge from legitimate procedures, and vice versa. Democratic legitimacy therefore requires both procedural and substantive elements in its definition (Young 2002, p.21). This is not the place for a discussion of the longstanding debate between democracy, justice and legitimacy,¹ but it is reasonable to suggest that the proper ends of government in a democratic sense are those concerned with upholding the rights of the people that are fundamental to the realisation of their political equality and essential to the democratic process. As Dahl clearly states, "to the extent that primary political rights are absent from a system, the democratic process does not exist" (1989, p.170).

Furthermore, legitimacy ensures political outcomes are accepted by those affected by them. Relying on the people as the source of legitimate authority provides "the moral grounds for obedience to power" (Parkinson 2006, p.21), as the subordinate are obliged to accept the decisions of the dominant due to the legitimacy of their authority. As Peter puts it, democratic legitimacy refers to "the normative concept that establishes under what conditions the members of a democratic constituency ought to respect a democratic decision" (2009, p.4). As the legitimate source of authority is the people, then the people are likely to obey and consent to the decisions they themselves have contributed to making.

From this, the second underlying research question is raised. How can the impact of a mechanism such as the ECI on a political system's democratic legitimacy, as just defined, be evaluated? How can the abstract concept of democratic legitimacy be operationalised in such

¹ For an introduction to this debate see Dworkin (1995), Habermas (1995a) and Pettit (2012).

a way as to facilitate an evaluation of its quality? I maintain that it is not helpful to envisage any particular combination of institutions as most accurately embodying the concept of democratic legitimacy, to be used as a benchmark against which to evaluate real world conceptions. Privileging one combination of institutions as democratically legitimate over any other can only lead to real world political systems failing to live up to unrealistic expectations, as I will show has been the case with discussions of democratic legitimacy in the EU. Instead, it is necessary to identify criteria that can be applied to any political system to evaluate how its elements contribute to or detract from the democratic legitimacy of the system as a whole.

Related to this, a systemic approach, as recently advanced and advocated in the form of deliberative systems (Mansbridge et al. 2012), is also appropriate for the evaluation of the democratic legitimacy of a political system and the contributions of individual institutions. Different institutions can bring different strengths and weaknesses of democratic legitimacy to the system as a whole. Whilst there can be no ideal democratically legitimate political system, different political systems can meet the definition of democratic legitimacy through different combinations of institutions present in the systems, and the interactions between the institutions can be as significant as the individual institutions themselves.

Implicit in this view is also that operationalising the definition of democratic legitimacy to evaluate the impact of elements of a system on its overall democratic legitimacy enables a system to be more or less democratically legitimate. That is, democratic legitimacy is not merely a discrete variable that can only take one of two forms: democratically legitimate or not democratically legitimate. Though it is still possible to say that some systems are democratically legitimate and others are not, once it is established (or, at the least, assumed) that a political system falls into the former category, the question of democratic legitimacy becomes one of degree (Sartori 1987, p.184). It is thus possible to think in terms of a continuum or scale of democratic legitimacy whereby a political system's democratic

legitimacy can increase or decrease, within the realm of being democratically legitimate, along what could be visualised as a sliding scale.

The third underlying research question is, thus, in order to evaluate the potential impact of the ECI on the democratic legitimacy of the EU, it is necessary to establish the status quo: how democratically legitimate was the EU prior to the introduction of the ECI? Is the ECI enhancing or detracting from this extent of democratic legitimacy? Only by providing answers to this question will it be possible to answer the overall question of the *impact* of the ECI on the EU's democratic legitimacy. It is widely considered that the EU suffers from a deficit of democratic legitimacy, though the nature of this deficit needs to be identified. The EU presents a unique and complicated case for evaluation of democratic legitimacy, which makes it difficult to get an overall picture of its democratic quality at any given time (Eriksen & Fossum 2012b, p.3). As Eriksen and Fossum summarise, "the EU's peculiar, and distinctive, institutional structure (with great asymmetries and polycentric features), makes it difficult to meet standards of democratic legitimacy" (2012a, p.27). Nonetheless, it is necessary to explore the status quo of democratic legitimacy in the EU in order to establish the impact the ECI can have on it.

It is also important in addressing these questions to consider the context in which the ECI's first three years have played out: a context of crisis. The crisis of the Eurozone caused by the global economic crisis led to claims also of a crisis of democracy in the EU. As Eriksen and Fossum state, "the present European economic crisis raises a normative claim of democracy," in terms of the questions it triggers regarding authority and accountability (2012b, p.2). Measures instituted to address the sovereign debt crisis in member states such as Greece have been described as "inefficient and illegitimate, compounding the already existing democratic deficit" (Bellamy 2012, p.3). Schmitter has reflected that a crisis such as that which has occurred in the Eurozone should have driven the EU to deeper political integration and the enhanced democratic legitimacy that that could bring, yet this has not materialised (2012,

p.40). Instead, the efforts made to save the Eurozone have put increased pressure on the democratic legitimacy credentials of the EU and as such they require improvement more than ever before. As he states, without enhanced mechanisms of participation and accountability “the legitimacy of the whole operation would be subject to constant challenge” (Schmitter 2012, p.43). These additional pressures on the democratic legitimacy of the EU, specific to the context of crisis during the period of time in which the ECI was introduced and is evaluated in this thesis, should be borne in mind as they may affect the answer to the central research question.

Advancing debate

In addressing the central and underlying research questions, within this thesis I make several contributions to existing understandings arising from the relevant bodies of research. First, and most significantly, research on the ECI is, at present, sparse and notably speculative. There is no existing research that explicitly addresses the impact of the ECI on the democratic legitimacy of the EU. Whilst this question is briefly addressed by Conrad (2011) in one article it is not considered in significant depth, and as it was published before the Regulation underpinning the ECI actually came into effect, it is naturally speculative. Indeed, much of the published research that relates to the ECI does so from a prospective viewpoint, unable to consider how it is actually performing in practice. For example, the ten articles that constituted the ‘Special Issue: The European Citizens’ Initiative: A first for participatory democracy?’ of *Perspectives on European Politics and Society*, published in 2012, were necessarily speculative about the ECI’s functioning based solely on how Regulation 211/2011 envisaged the instrument. The contributions of Cuesta-López (2012), Szeligowska and Mincheva (2012), Monaghan (2012), De Clerck-Sachsse (2012), Bouza García and Del Río Villar (2012), Greenwood (2012), Bouza García (2012), Carrara (2012), and Hrbek (2012) to the debate about the impact of the ECI are, consequently, anticipatory and predictive, at the special issue’s

editors' own admission (García & Greenwood 2012). This thesis therefore builds upon many of the projections of these scholars, including those regarding the role of civil society organisations in the ECI process (De Clerck-Sachsse 2012, pp.307–8), how the use of the internet and social media is likely to assist ECI campaigns (Carrara 2012, p.366), and the attitudes and reactions of the EU institutions to the ECI (Szeligowska & Mincheva 2012, p.282).

Additional studies of the ECI have also focussed only on its impact in particular areas, such as Smith's (2012) contribution which emphasised the extent to which the ECI could empower citizens, and other works which have touched on the ECI whilst addressing other questions, including Badouard's (2013) assessment of the Commission's public consultation on the ECI, Kohler-Koch's (2013) exploration of the role of civil society for democracy in the EU, or Saward's (2013) application of an enactment perspective to democracy in the EU. This thesis goes further than previous research by expressly addressing the question of how the ECI can impact on democratic legitimacy in the EU and including in its analysis practical examples and cases of how the ECI has functioned in its first three years. Whilst focusing on the ECI's formative years has its own limitations in terms of available evidence and the extent to which generalisations can be made from this particular timeframe, there is also value in investigation at an early stage such as the social relevance of the research, utility for future consideration of the institutional evolution of the ECI, and in reflecting the EU's own timescales for its review².

The second contribution this thesis can make is to literature on the EU's 'democratic deficit'. The nature and extent of the deficit has been debated extensively since the term was first used by British MP David Marquand in 1979³ (1979). The ECI has been touted by some, most notably individuals from the EU's institutions, to be (part of) the solution to the democratic deficit the EU faces (Šefčovič 2012a; European Commission 2012a). Therefore, by evaluating the impact the ECI can have on the EU's democratic legitimacy this thesis will contribute to

² These limitations and advantages are discussed further in chapter four.

³ An overview of the key positions on this debate is set out in chapter two.

advancing debate in this area. Furthermore, taking a systemic approach and applying the criteria deriving from the definition of democratic legitimacy to the EU case constitutes a new perspective on addressing the question of the deficit. As I will argue, much of the research relating to the EU's democratic deficit thus far reaches a conclusion on the nature of the deficit and potential solutions based on a comparison between the EU and a democratic political system at the national level, with the emphasis on parliamentarisation and competition for executive authority, among other things (Follesdal & Hix 2006; Hix 2008; Bellamy & Castiglione 2003). A significantly more flexible, normative concept-driven and systemic approach is applied in this thesis to facilitate an evaluation of the contribution or detracting of one particular element of the EU's political system, the ECI, to the EU's democratic legitimacy. In doing so, this research contributes to the ongoing debate surrounding the EU's democratic deficit and how it can be analysed.

However, using a systemic approach and the analytic criteria I identify will not only advance debate about the EU but can also contribute to literature relating to the evaluation of democratic innovations in different contexts. The approach and criteria I propose and utilise are not specific to the case of the EU but stand to contribute positively to existing research on democratic innovations, such as that by Smith (2009), who applies a series of criteria (inclusiveness, popular control, considered judgement, transparency, efficiency and transferability) to a variety of institutions yet distances the empirical work undertaken from normative democratic theory, and Kies and Nanz (2013), who provide a compilation of studies on a variety of participatory innovations in the EU, but do not offer a coherent framework for analysis. Other works aimed at evaluating democracy, such as Beetham's (1994) "principles and indices for a democratic audit" (thirty criteria based on the categories of free and fair elections; open and accountable government; democratic society, and civil and political rights) and Lords' "European Union Democratic Audit Tests" (citizenship, authorisation, representation, accountability, and constitutionalism) (2004, pp.28–9), as with the critique of

much literature related to the EU's democratic deficit, emphasise certain institutional arrangements that are considered the most democratic in a certain context. Building on all of these previous approaches in exploring how democratic legitimacy can be operationalised and applied in a systemic way to evaluate the contribution of elements of the system to its overall democratic legitimacy has the potential to contribute to scholarship exploring and evaluating democratic innovations of a variety of designs in a variety of contexts.

Thesis outline

This thesis is divided into two sections. The first section, chapters two to four, addresses the underlying research questions I have identified: what is meant by democratic legitimacy?; how can democratic legitimacy be evaluated?, and what was the status quo of democratic legitimacy in the EU? Chapter two addresses the third underlying research question and identifies the key features of the debate regarding the EU's democratic deficit. It argues that the primary source of the deficit is the lack of democratic inputs into the EU's political system, which in turn affects the democratic outputs of the system. However, the fundamental issue with proposals that have been made for reducing the democratic deficit is that they are almost always based on a nation state model of a democratic system. Still, one suggestion for rectifying the deficit that has gained momentum within the EU in recent years is to increase the direct participation of citizens in EU policy-making. The ECI constitutes the biggest experiment in pursuit of increasing direct participation thus far, and the chapter sets out the history of the ECI's development and explains the finer details of how it works.

Chapter three takes a more normative turn in answering the second underlying research question by identifying the three criteria that should be used to assess a participatory innovation's impact on democratic legitimacy: inclusion, impact and issues. A 'participatory' or 'democratic' innovation is defined by Smith as an institution that has "been specifically designed to increase and deepen citizen participation in the political decision-making process",

with key emphasis on the direct participation of citizens, rather than representatives, and on the formal nature of the institution, in that it has a distinct role to play in the political system (2009, pp.1–2). I argue that all three criteria should be addressed from a systemic perspective: highlighting how the innovation contributes to or detracts from the democratically legitimate inclusion, impact and issues of the system in which it is embedded, and how it interacts with other elements of the system. It reaches this conclusion through reviewing the normative debate about the most appropriate means of achieving democratic legitimacy, as defined above, in a political system, specifically that between representative and participatory democrats. It argues in favour of combining both participation and representation in order to maximise the advantages and minimise the limitations of each. The chapter also includes a brief consideration of referendums and citizens' initiatives used elsewhere, their key differences from the ECI and how they contribute to the democratic legitimacy of their political systems, in order to illustrate the usefulness of these criteria and how insights can be drawn for the evaluation of the ECI in later chapters.

Chapter four brings together the conclusions of the previous two chapters and sets out how the criteria for the analysis of an innovation's impact on democratic legitimacy from chapter three will be applied to the ECI within the current context of democratic legitimacy deficit set out in chapter two. It identifies the research sub-questions arising from the three analytic criteria that are addressed in the second part of the thesis: inclusion, impact and issues. It also includes a description of the methodology used throughout the research: a case study approach incorporating documentary analysis, semi-structured interviews and direct observation. Addressing the potential limitations of the research findings, particularly given the limited empirical evidence available and the necessarily 'in principle' focus given the youth of the ECI, I argue there is distinct value in investigating an innovation early in its life and whilst conclusions are necessarily tentative this should not be read as insignificant. Finally, this

chapter describes the four ECI campaigns on which the majority of the empirical evaluation of the ECI is based throughout the thesis, and the justifications for the choice.

The second section of the thesis, which addresses more directly the central research question (what is the potential impact of the ECI on the democratic legitimacy of the EU?), is also divided into three chapters, each dealing with one of the analytic criteria identified in chapter three and addressing the research sub-questions set out in chapter four. Chapter five, therefore, is the first of these analytical chapters and considers the ECI's impact on the first criterion: inclusion. It argues that there is reason for both optimism and doubt in this respect. I find that on paper the ECI appears to be maximally inclusive, yet in practice there are reasons to doubt this is the case, such as a lack of awareness of the ECI's existence. However, the existence of the ECI may contribute to a more compelling sense of EU citizenship amongst the citizens of the EU member states and in turn this has the potential to increase the ECI's impact on inclusion. With regard to the potential exclusion of certain sections of society within the EU, notably those without the sufficient knowledge, expertise and resources, in favour of the participation of Civil Society Organisations (CSOs), I highlight the advantages to be had by involving pre-existing, highly networked organisations in the ECI process, and how this can have a positive influence on the inclusion in EU policy making. This is because the representative claims made by such organisations can bring constituencies of EU citizens into being, thereby facilitating greater inclusivity of EU policy making in the future. The potential unintended consequences of the ECI in terms of inclusion should, I emphasise, not be discounted.

Chapter six, the second analytical chapter, takes on the argument that in order to have a positive impact on the democratic legitimacy of the EU, the ECI must have observable consequences. I show that the ECI can have both direct and indirect impacts, though most significantly in unexpected ways. In terms of its direct impact, I consider the ECI's effect on the

different stages of the policy making process (agenda setting, discussion and debate, decision making and implementation). The ECI was designed primarily to have an influence on the agenda setting stage of the policy making process yet in practice it appears to have had the least impact here thus far. More unintended consequences of the ECI can be seen on the later stages of the policy making process, especially the discussion and debate stage, though this has mostly been confined to the local or national level. Some ECI campaigns have also demonstrated limited influence over the decision making and implementation stages, where officially the ECI is afforded zero influence. I also consider indirect impact, and suggest that in line with the spillover thesis, participation in an ECI campaign can trigger political participation in alternative arenas, most notably so far in local movements. These unanticipated indirect impacts must not be ignored as important consequences of the ECI.

The last of the analytic criteria, issues, is covered in chapter seven. I argue that the issues of ECI campaigns can affect how it impacts upon the democratic legitimacy of the EU in two key ways: issue salience, or how prominent the issue is within the public consciousness, and normative justifiability, which I elaborate in terms of political rights protection and the upholding of political equality being the proper ends of government. In terms of normative justifiability, I find that initiatives framed in terms of rights are prominent and are more likely to be successful and have the greatest impact in terms of those highlighted in the previous chapter, and the ECI can be used to try and bolster democratic rights in the EU. Second, I note that the more salient the issue of the campaign, in general the more likely that the ECI will have a positive effect on inclusion and impact (as addressed in chapters five and six). However, I highlight how salience is a nuanced concept, and different types of salience may affect the extent to which this is the case. Thus issue salience does not always translate into positive contributions to inclusion and impacts.

Finally, chapter eight sets out the overall conclusions of the thesis with regard to the central research question and its underlying components. From the findings of the chapters on inclusion, impact and issues, it can be concluded that the ECI, despite the current frustration and disappointment of many commentators, has scope for positive impacts on the EU's democratic legitimacy. It is not difficult to see from where the scepticism comes as the ECI is not living up to the expectations implicit in the Regulation underpinning it, yet the systemic approach to analysis taken in this thesis highlights the potential for broader, positive effects on democratic legitimacy in the EU that are unanticipated by the Regulation. Finally, it is highlighted how the findings of this project can contribute to enhancing scholarly debates regarding the ECI, the democratic deficit and the evaluation of democratic innovations, and viable avenues for future research are identified. Such unanticipated consequences of the ECI as enabling the formation of issue-specific, temporary and flexible demois on which the EU's democratic legitimacy can be based and providing a viable avenue for these demois to pursue their issue of concern, generating impacts on unexpected stages of the decision making process at the EU level as well as local and national levels, and facilitating the pursuance of issues that uphold the political rights of all EU citizens, lead to the overall conclusion that there is scope for the ECI to have a positive impact on the democratic legitimacy of the EU.

Chapter 2: Democratic Legitimacy in the EU

The EU, it is generally agreed, suffers from a deficit of democracy that must be addressed, and the ECI is one means through which the EU institutions are currently attempting to do this. In this chapter, I explain why the EU is considered to be afflicted with a democratic deficit by highlighting how the existing literature frames the issue in terms of the commonly made distinction between democratic inputs and democratic outputs. Democratic inputs have an obvious relationship with the people as the appropriate source of authority component of democratic legitimacy, and democratic outputs with the proper ends of government element. Under these two criteria I identify the most common claims made regarding the nature of the democratic deficit and the suggestions that have been made as to how these could be rectified, and in doing so I show how the most convincing concerns about democracy in the EU can be traced to a lack of democratic inputs into the system. I also highlight the more recent addition of the concept of democratic throughput and suggest the relevance of this for this research project. Throughout the chapter I highlight how the debate regarding the existence and nature of the democratic deficit is contingent upon the model of democracy that is being used, i.e. if representation and accountability are emphasised the EU is likely to fare differently in terms of democratic legitimacy than if direct participation and autonomy are favoured. Furthermore, I contend that many of the definitions and solutions that are commonly used have proven inadequate to address effectively the deficiency primarily because they are based on a nation state conception of democracy, with emphasis on competitive elections to a powerful legislature and directly accountable decision-making. Such conceptions cannot effectively be applied to the transnational characteristics of the EU polity.

One potential (albeit partial) solution proposed in the EU democracy literature that has only recently started to be formally explored at the EU level includes providing for the increased

direct participation of the citizens in the EU's policy making process. This idea has led to the introduction of the right of initiative, the ECI, into the EU's legal framework. Finally, I describe the process that led from the idea of an initiative right within the EU to the implementation of the regulation that underpins the ECI, setting the scene for the rest of the thesis where I will evaluate whether this can rectify the EU's democratic malaise or fail to do so, as so many past attempts at resolving the deficit have done.

The democratic deficit

Before considering where the ECI came from as a potential remedy to the EU's democratic deficit, it is first necessary to identify the nature of that deficit. It is widely acknowledged that the EU suffers from a deficit of democratic legitimacy. The first use of the term 'democratic deficit' is attributed to British politician David Marquand (1979), who, in 1979, argued that further European integration should not take place unless the democratic credentials of the Community institutions could be guaranteed, and asserted that a democratic deficit would ensue if the institutional changes proposed at that time came into effect. Since then, the term 'democratic deficit' has been used to refer to "a lack of democratic structures and processes within the EU's institutions", particularly when compared with those that exist at the national level (Sieberson 2007, p.446), or a

"discrepancy between the pervasive effects of the regulative power of the EU and the weak authorisation of this power through the citizens of the member states who are specifically affected by those regulations." (Kies & Nanz 2013, p.1)

However, these definitions are contested, and Follesdal and Hix even suggest that the term has been used to mean as many different things as the different nationalities and individual characteristics of the academics and practitioners that use it (2006, p.543). Each definition clearly depends on how the individual offering the definition conceptualises democracy and what they consider is required for the EU to be democratic (Kohler-Koch & Rittberger 2007, p.2). As I will highlight below, this proves a significant obstacle to an agreed upon course of

action to rectify the deficit and has contributed to the ineffectiveness of proposed solutions in the past. Nevertheless, as “the notion of the ‘democratic deficit’ has swiftly become the most prominent label attributed to the EU polity” (Kohler-Koch & Rittberger 2007, p.1), it is therefore imperative to investigate further what is meant by this term and how others have contended it should be addressed.

Democratic input, output and throughput

Notwithstanding such discrepancies in the conceptualisation of the democratic deficit, much of the literature on this topic frames the debate in terms of a lack of either the democratic inputs or democratic outputs (or, indeed, both) that are required for the EU to be considered fully legitimate, a distinction developed by Scharpf using the concepts of ‘autonomy’ and ‘effectiveness’ (1996, p.136). Inputs refer to the involvement of the citizens in the decision making process, either directly or through a democratically elected representative body, and in particular their participation on an equal basis (Lenaerts & Cambien 2009, p.185; Bellamy 2010, p.2). This has links with the definition of democratic legitimacy wherein the principle of political equality leads to the recognition of the people as the appropriate source of political authority. Democratic output, on the other hand, refers to achieving effectively the goals of the EU citizens (Kohler-Koch & Rittberger 2007, p.12), or “the degree to which the substance of the decision may be said to promote collective interests in a manner compatible with the democratic goals of equal concern and respect” (Bellamy 2010, pp.2–3). This can be related to the protection of democratic rights as the proper ends of government, following the principle of political equality.

Referring to the oft-repeated phrase of Abraham Lincoln, it is suggested that input-oriented legitimacy relates to government *by* the people, as political choices are legitimate when they derive from the authentic preferences of the citizenry, whilst output-oriented legitimacy reflects a greater emphasis on government *for* the people, as political choices are legitimate when they promote the common welfare of the citizenry (Scharpf 1999, p.6). Both of these

elements must necessarily be present, it is often suggested, if the EU is to be sufficiently democratic and no longer suffer from a democratic deficit. As Abromeit claimed, “a modicum both of participation and of system effectiveness (and resulting acceptance) are needed to legitimise governance that claims to meet the standards of democratic government”, and “so far the EU fails in both respects” (1998, p.167). There is clearly a certain level of interdependence between the two criteria, and it is often argued that a deficiency of one may be counterbalanced by the successful fulfilment of the other (Schmidt 2013, p.19). Therefore, in much of the EU literature (though not all, as will be emphasised below), it is agreed that to be considered democratically legitimate, democratic legitimacy must be evident in both the inputs to and outputs from the EU system.

Output problems

Having highlighted the distinction between democratically legitimate inputs and outputs, I am now able to consider the main claims made regarding the democratic deficiencies of these with regard to the EU, starting with outputs. The main claim made regarding a lack of democratic outputs from the EU refers to the relationship between the EU’s policy outputs and the desires of its citizens. Hix claims that there is a significant gap between the policies that the EU citizens desire and the policies the EU provides (2008, p.71); as governments are not constrained by strong parliaments at the EU level and organised business interests dominate instead, the resulting policies coming from the EU, such as large farming subsidies and the neo-liberal internal market, are more right-wing than most domestic policies in member states (Scharpf 1996; Streeck & Schmitter 1991). This claim is that as the outputs are not deemed to be desirable by the people there is a lack of democratic output from the EU. It has been suggested that the policies adopted by the EU are not always supported by a majority of citizens in most member states, but instead because of the strong business and industry lobbies at the EU level most of the EU’s policies are skewed towards the owners of capital, more so than at the national level where policy compromise and democratic party politics are

more common (Hix 2008). The increasing importance of lobbying at the EU level, according to Abromeit, is in conflict with any traditional conception of representative democracy as it “precludes accountability to a larger public” (1998, p.23); this highlights the interrelationship between outputs and inputs. Consequently, as the citizens are deemed likely to be dissatisfied with the EU’s policy outputs, this disconnect indicates that the EU is not fulfilling one of the key principles of democracy: responsiveness to the needs and wants of the people implicit in the recognition of political equality in the proper ends of government.

However, some scholars insist that the EU does not suffer from a democratic deficit at all because its outputs are sufficient to provide it with all of the democratic legitimacy it requires. For example, Moravcsik contends that the standards others set for a democratic EU are too high, and that not even national political systems are able to reach them (2003, p.45). He argues that if reasonable criteria are used to judge the democratic credentials of the EU, then there is no evidence of a democratic deficit (Moravcsik 2002, p.605; Moravcsik 2003, p.38). This is because the EU is, according to Moravcsik, heavily constrained in its actions, and the functions it is delegated by the national governments of the member states are minimal and do not require popular participation (2002, pp.206–7). He highlights that the issues that are salient to the people of Europe are usually those where the EU has little or no influence: the issues that people actually care about are limited to the national level (Moravcsik 2003, pp.40–1).

In a similar vein, Majone highlights that the EU’s outputs are in a limited range of policy areas due to its minimal budget and non-existent power of taxation (1998, p.10). Only specific functions that can be carried out efficiently and credibly at the supranational level are delegated to the EU, and therefore the EU constitutes the fourth branch of the member states’ governments, or the ‘regulatory branch’ (Majone 1998, p.28). Provided the tasks delegated to the EU are “precisely and narrowly defined, non-majoritarian sources of legitimacy – expertise,

procedural rationality, transparency, accountability by results – should be sufficient to justify the delegation of the necessary powers” (Majone 1998, p.28). The argument is thus that the limited areas in which the EU is empowered to make policy do not require any democratic legitimation.

In response to this claim, the point that the EU makes policy in limited areas that are not politically salient to the wider public, and consequently do not trigger debate and the development of opinions, is misguided. Limited debate and engagement is elicited, according to Follesdal and Hix, due to the lack of political competition and opportunities for accountability at the EU level; if there were opportunities for debate the issues would become salient (2006, p.551). It is also unrealistic to assume that the citizens of Europe are unconcerned with the policy areas in which the EU has exclusive competence. The lively debate within the media around the Transatlantic Trade and Investment Partnership (TTIP) and the coordinated protests throughout Europe against the agreement in April 2015 is just one example demonstrating that even the EU’s most regulatory policies, in this case trade policy, can be highly salient.

Second, it is argued by Moravcsik that the various checks and balances and rules that the European institutions must adhere to results in policy outputs being sufficiently democratic as they must have the support of many actors and policy makers to be successful (2002, p.610). In those areas that the EU *can* legislate, it has minimal powers of administration and implementation so democratically accountable national governments and parliaments must necessarily play a role (Moravcsik 2002, pp.207–8). Moravcsik states: “while it is hard for such governments to avoid compliance permanently, they can shade it to benefit this or that domestic group, and delay it for years” (2003, p.40). In the more salient issues where the EU does have some influence, the European Parliament, directly representing the people of the EU, is particularly active and influential (such as environmental and social issues) (Moravcsik

2003, p.41). Moravcsik concludes that “[w]hen judged by the practices of existing member states and in the context of a multi-level system, there is little evidence that the EU suffers from a fundamental democratic deficit” (2002, p.621); in essence, he believes that “the EU’s democratic deficit is a myth” (2003, p.45).

There are several reasons why Moravcsik’s emphasis on indirect legitimation through national governments is insufficient to provide the EU with the necessary democratic accountability it requires to be fully legitimate. Beetham and Lord highlight three of these reasons why a reliance on the legitimacy of the member states cannot ensure the legitimacy of the EU institutions: EU law has a direct impact upon the EU citizens and they therefore need to directly acknowledge its binding nature; the way in which the EU has developed historically demonstrates that legitimacy deriving from elite consensus (agreements made between elites without consultation with the general public) is problematic and unsustainable, and finally the EU impacts upon the legitimacy of the member states themselves, a fact that must definitely not be overlooked (Beetham & Lord 1998a, pp.17–18). Consequently, they contend that, to be democratically legitimate, the EU must be based on more than the indirect legitimation from the member state governments:

“The notion that it does not matter that the policy-initiating body – the Commission – is unelected because all final decisions have to be approved by the indirectly elected Council is deeply unsatisfactory. It ignores the point that agenda setting may be an independent source of political power, because it determines whether questions are to be discussed at all and it problematises them in a restrictive manner”.⁴ (Beetham & Lord 1998a, p.27)

This argument is particularly significant as the EU moves further into the realm of pursuing positive, as opposed to negative, integration between the member states⁵. In 2001 Habermas

⁴ The Commission’s exercise of its agenda-setting power is explored in greater depth in chapter six.

⁵ The differentiation between positive and negative integration was first made in reference to the completion of the single market, and refers to the distinction between integration between countries through the removal of barriers (negative integration) and integration due to the construction of new institutions, laws or regulations designed to enforce it (positive integration).

noted the growing sense of dissatisfaction among the population directed in particular towards the Commission as a consequence of its lack of accountability given its agenda-setting control (2001, p.14), and this trend has only continued over the last decade. Finally, as the power of the European Commission has increased relative to national governments, the indirect legitimation through national democratic procedures, which was relied on in the past, is no longer sufficient to render the EU democratically legitimate (Habermas 2001, p.14).

A further argument as to why the EU's democratic deficit is not problematic in terms of outputs is that democratic legitimacy at the EU level would make it more difficult for the EU to produce good policies. This argument is advanced by Majone, who perceives that EU decision making does not need to be and in fact should not be democratic, as to make it so would impede the efficiency of European policy making (2010, p.150). Majone sees the EU as a 'regulatory state', instituted to address any market failures, meaning that the EU must be what he terms 'pareto-efficient' (1999, p.2; 2010, p.172). If a form of majoritarian democracy existed in the EU, Majone argues, it would cease to be pareto-efficient and would thus be ineffective and its output would be jeopardised (Follesdal & Hix 2006, pp.537–8; Majone 2010, p.151). As he states, "efficiency-oriented policies ... are basically legitimated by results" and therefore they can be delegated to institutions that are independent of the political process, such as the Commission (Majone 1998, p.28). He goes so far as to argue that the application of majoritarian democratic standards to the EU would result in "deadlock and possibly even disintegration" (Majone 1999, p.20). For Majone, therefore, the existence of a democratic deficit, in terms of limited representative democracy in the European Parliament and the dominance of the unelected Commission, is defensible and even advantageous given the efficient and effective regulatory outputs from the EU.

In response to this perspective, it must be pointed out that the EU's policy outputs are not purely efficient but range from primarily efficient to primarily redistributive with much

variation in between (Follesdal & Hix 2006, p.542). As Follesdal and Hix state, Majone's argument that EU policy is all about pareto-improving outcomes is "either implausible, or requires a drastic reversal of many competences back to the member states" (2006, p.543). By pointing to the many policies of the EU that result in both winners and losers, Follesdal and Hix show that the EU cannot dismiss the necessity of being democratically accountable to its people.

Furthermore, Majone's emphasis on policy outputs is problematic for democratic legitimacy as, as noted above, the overall democratic legitimacy of the EU is commonly argued to be dependent upon both inputs *and* outputs. Bellamy fervently argues that democracy cannot possibly be defined solely by outputs, as input processes that recognise equality are necessary for making and contesting decisions (2010, p.5). He suggests that a focus on outputs leads to feelings of popular exclusion, and notes how the quality of input processes invariably affects the quality of outputs, so the one cannot be neglected in favour of the other (Bellamy 2010, p.7). Therefore, Majone's argument that the EU does not suffer from a democratic deficit because its outputs can be considered to be democratic (in so far as they are effective in creating credible commitments in regulatory matters) is insufficient, as consideration must equally be given to the democratic inputs into the process, without which there can be no democratic outputs. Therefore, the perceived problem with democratic outputs can be viewed as directly related to the limited democratic inputs into the EU, to which I now turn.

Input problems

Whilst those who argue that the EU is sufficiently democratically legitimate do so by emphasising output legitimacy, there is a notable absence of scholars who would argue that the EU has sufficient input legitimacy (Schmidt 2013, p.12). As Scharpf highlights, the significant barriers to input legitimacy cannot be overcome by any assertion that input legitimacy is not a fundamental problem:

“the lack of a pre-existing sense of collective identity, the lack of Europe-wide policy discourses, and the lack of a Europe-wide institutional infrastructure that could assure the political accountability of office holders to a European constituency.” (1999, p.187)

He concludes:

“for the time being and for all currently practical purposes, the European polity will lack the quality of *government by the people*, and that all discourses that attempt to draw on input-oriented legitimising arguments can only exacerbate the perception of an irremediable European democratic deficit.” (Scharpf 1999, p.188)

There is also reason to believe that democratic inputs should be logically prior to the output criterion. Lord (2006) highlights two reasons why an emphasis on outputs is insufficient to argue that the EU does not suffer from a deficit of democratic legitimacy. First, he argues that suggesting that where policy outputs align with citizens’ wants the outputs are democratic neglects the need for citizen preferences to be deliberated rather than simply aggregated. Second, he argues that the value of democracy resides in the rights it confers on the people, rather than in the policy outputs it produces. Therefore, we must take “public control with political equality – government by the people – as the primary standard; and any evidence that Union institutions are structured to align policy outputs with popular preferences – government for the people – as an important, but still secondary test” (Lord 2006, p.672).

To make the EU sufficiently legitimate, therefore, it is necessary to address in particular the problem of input legitimacy, which can be divided into three distinct yet interrelated elements as the literature emphasises: the limited power of the European Parliament as the only directly elected EU institution, the reduced power of national actors (legislatures and executives) in EU policy-making, and the lack of electoral contestation over agenda-setting authority in the EU. I will describe each before turning to evaluate their implications for developing solutions to the democratic deficit.

Weakness of the European Parliament

The first claim is that the European Parliament is weak, bearing in mind that it is the only directly elected institution in the EU: MEPs are the only EU level actors that have been directly mandated by the people of Europe to act on their behalf. The weakness of the European Parliament dominated debates about the democratic deficit up until the mid-1990s, when additional arguments became prominent (Saurugger 2008, p.1277). This weak European Parliament argument is closely related however to the second claim, as the strengthening of the European Parliament relative to the European Commission and Council of Ministers formed part of the proposed solution to the problem of the decreasing power of national parliaments (Hix 2008).

The European Parliament is but one of four key decision makers in the EU policy process, and, as noted below, European elections are decentralised and characterised by apathy, with little discussion of the real issues at stake (Moravcsik 2002, p.604). This is not conducive to the European Parliament exerting its authority as the only directly elected EU institution. However, whilst successive EU treaties have increased the role of the European Parliament, its powers remain limited and at most it has equal decision making power with the Council of Ministers. As Bellamy and Castiglione note, the European Parliament “remains a secondary player in the business of European government” (2000, p.74). The weakness of the European Parliament relative to the other EU institutions is therefore a significant concern regarding the democratic inputs into the EU.

The Treaty of Lisbon did address the status of the European Parliament through reasserting the fundamental principle of representative democracy on which the EU is founded, as stated in Title II Article 8 A (European Union 2007, p.14). The co-decision procedure, through which the Council of Ministers and the European Parliament have equal and joint decision-making power over Commission-initiated legislation, was renamed the Ordinary Legislative Procedure

(OLP) and made the most commonly used decision making process at the EU level. Rittberger argues that the use of the word 'ordinary' in this term indicates that "the European Parliament more closely resembles a domestic parliament or chamber in a federal system than a parliamentary assembly of an international organisation" (2012, p.18), highlighting how significantly the European Parliament has developed since the inception of the Common Assembly of the European Coal and Steel Community in 1951. Nonetheless, when compared with parliaments at the national level, the extent to which the European Parliament, as the only directly elected institution at EU level, can influence and affect EU policy is limited. As competences are transferred to the EU level, where the representatives of the people lack power to influence outcomes, and decisions are increasingly made in the Council by qualified majority voting, which can leave some member states' representatives outvoted, the principles of representative democracy are undermined and accusations of a legitimacy gap arise.

Reduced power of national actors

Second, it is argued that the powers of national actors, particularly parliaments, over policy making in the EU is reducing, thereby decreasing the democratic inputs into the system (Hix 2008). Once the weakness of the European Parliament lost its hegemony as the dominant feature of explanations of the democratic deficit in the 1990s, attention turned towards crises of democracy and participation more broadly, including at the national level (Saurugger 2008, p.1278). Grimm noted that as decision making power dwindled in the member states it accumulated in the EU, and as the EU's institutions lack democratic credentials the regulations that citizens are subject to are formulated and decided upon in an insufficiently democratic manner (1995, p.292).

This argument still exists in more recent literature, as Bellamy and Kröger (2014) highlight several ways in which the power of national governments, parliaments and parties has been limited by the EU. These include:

- where competences have been transferred to the EU level (in areas such as agriculture and trade, for example) the policy-making powers of national actors in these areas are severely limited;
- the prioritisation of the realisation of the single market (the free movement of goods, services, capital and persons within the EU, and the right of European citizens to live, work, study and conduct business in any member state) means that, even in areas where national actors retain power, they are constrained in their actions to the extent that policies must align with the single market's four freedoms or the actor may face prosecution;
- the supremacy and direct effect of EU law, as established by the Court of Justice, means that national actors are severely limited in the extent to which they can object to laws emerging from the EU: there is no choice but to implement these;
- the resulting restriction in policy choices for governments means they can present limited choices to the electorate, reducing electoral competition thereby devaluing elections;
- increased use of qualified majority voting and the consequent bargaining in the Council and the European Council makes it difficult for national parliaments to authorise governments to make decisions agreed upon in advance, thereby diminishing the traditional veto power of the parliament;
- the informational asymmetries created by executives rather than legislatures representing the people at the EU level reduces the extent to which the legislature can hold the executive to account for its decisions;

- the increased use of soft policy instruments such as the open method of coordination leave very limited room, if any, for the involvement of national parliaments. (Bellamy & Kröger 2014)

As a significant part of the EU's legitimacy is supposed to derive from the indirect election of the members of the Council of Ministers and the European Council, whose own legitimacy rests upon their being held accountable to a democratically-elected representative parliament at the national level, the diminishing powers of national parliaments, and to some extent also governments, is often raised as a significant area of concern for the EU's input legitimacy.

Lack of electoral contestation over authority and agenda

The third claim related to democratic inputs is the lack of electoral contestation over political authority and control of the political agenda at the European level. Citizens do elect their governments who sit in the European Council and Council of Ministers, and directly elect their MEPs, but it is argued that neither of these electoral contests have any influence on the direction of EU policy. National elections are fought on national domestic issues and European elections are argued to be 'second-order' national elections; being fought and won on the same basis (Hix 2008; van der Eijk et al. 1996; Reif & Schmitt 1980). Traditionally, European elections attract lower turnout than 'first-order' elections (and turnout continues to decrease in subsequent European elections), face lower levels of media interest, and a lack of European-specific content during campaigns (van der Eijk et al. 1996). This latter point means that the electorate is not provided with any genuine choice between competing visions of Europe, thereby limiting the extent to which elections to the European Parliament can be considered meaningful (Bogdanor 1989, p.214). Lord sums this up when stating: "most brutally put, European elections are not much about the institution that is, in fact, being elected"⁶ (2006, p.678). Consequently, even through the main avenue that exists for citizens to influence EU

⁶ Empirical evidence supporting these claims is provided by Reif and Schmitt (1980), Anderson (1998), and Garry et al. (2005).

politics they are not shaping the direction of EU policy as elections to the European Parliament are focused on national rather than European issues.

The most powerful institution within the EU is undoubtedly the European Commission: the sole institution with the ability to set the EU's agenda. It might be argued that national governments do have some control over the agenda as everything the EU undertakes must be within the remit of the Treaties, which have been agreed to by the member states' representatives, but individual pieces of legislation cannot usually be initiated by them nor by the European Parliament (Bellamy & Kröger 2014, p.444). As stated by Beetham and Lord, "the notion that the Commission can piggy-back on the democratic authorisation of the Council, so long as it is the latter which makes the final decisions, seriously under-states the importance of agenda-setting as an independent source of political power" ⁷ (1998b, p.64). Not only is the Commission the most powerful institution, it is also the least accountable body within the EU, either to the people or to the member states. The European Parliament does have the power to approve or reject the composition of the Commission in its entirety, and has in recent years undertaken this role in an increasingly active manner, vetoing the first proposed composition of the Barroso Commission in October 2004 (Follesdal & Hix 2006, p.540). However, once the representatives of the people have approved the College of Commissioners they no longer have a say in how the Commission conducts its business of setting the EU's legislative agenda. Therefore, the people are not provided with a choice over who effectively drives the process of law making that affects them on a day-to-day basis. As Van der Eijk et al. summarise, "the failure of the European electoral process to provide a mandate for future policy directions is grave," and requires significant attention if the EU is to be democratically legitimate (1996, p.160).

⁷ The Commission's agenda-setting power is explored in greater depth in chapter six.

Proposals to rectify input legitimacy

Several suggestions have been made over the years about how to improve the democratic inputs into the EU, based on these three claims. Most of these refer to the strengthening of the powers of parliaments, either at the national or EU level, and, as with the identification of the nature of the democratic deficit, are framed using nation state conceptions of democracy and the (misguided) expectation that the EU's institutions should reflect those at the national level.

Some scholars argue that to improve the quality of input processes, the power of the European Parliament, as the only directly elected institution of the EU, should be increased. Indeed, as noted above, the powers of the European Parliament have increased incrementally with each Treaty revision, with the OLP now the norm in most policy areas since the coming into force of the Treaty of Lisbon in 2009. Nonetheless, as already noted, the European Parliament still does not have power anything like that exercised by representative parliaments in the EU's member states: it cannot initiate or effectively veto legislation (though it can by Own Initiative Report request the Commission initiates an item of legislation). However, there are some issues with the idea of increasing the powers of the European Parliament further. For example, there is the argument that the EU lacks a demos as a pre-requisite for democratic legitimacy, and therefore simply increasing parliamentary representation is not going to create democracy. I deal with the demos concern further in chapter five.

Along these lines, Abromeit argues that a lack of collective identity among the people of Europe means that there is no single, collective public opinion, signalling a lack of substance for representative government and, as a consequence, parliamentary debates and their outputs are "pointless, or mere symbolism"⁸ (1998, p.33). Representation at the EU level is

⁸ The no demos thesis, and potential solutions to the problem of a lack of a single collective identity, is explored in depth in chapter five.

also made increasingly difficult by the lack of European political parties. Political parties, it is argued, are necessary to provide the citizens with effective choice at elections, to clearly identify alternatives to the current ruling party in the form of the opposition (Abromeit 1998, p.34). Whilst political groupings do exist in the European Parliament it is not common that these are discussed or considered when individuals are selecting candidates to vote for, consistent with the second-order election thesis arguments outlined above (van der Eijk et al. 1996).

It has also been argued that those who advocate strengthening the European Parliament in order to enhance the democratic legitimacy of the EU overestimate the level of representativeness of elected institutions in large polities in general, and their ability to bridge the gap between the government and people (Bohman 2007, p.163). Kymlicka goes so far as to argue that further strengthening the role of the European Parliament could undermine democratic citizenship, as it would lead to powers being shifted even further from the national level to the EU level where it is significantly more difficult to participate effectively in politics and almost impossible to engage in any meaningful democratic debate (1999, p.125). Therefore, he argues, strengthening the European Parliament, particularly if this is at the expense of the Council of Ministers, could cause the EU to cease being accountable to its citizens through their national legislatures (Kymlicka 1999, p.124). Beetham and Lord similarly highlighted this problem, stating that attempting to democratise the EU in these ways could unintentionally lead to the de-democratisation of the member states rather than the democratisation of the EU (1998b, p.74)

An alternative solution is therefore to strengthen the role of national parliaments in the EU legislative process, thereby maintaining their ability to hold EU legislators (especially those in the Council) to account for their actions. As Cheneval and Schimmelfennig note, measures to improve the democratic legitimacy of the EU should not all be focused on the supranational

level as there may be deficiencies at the national level which are contributing to the overall democratic deficit of the EU, and which therefore must also be addressed (2013, p.347). Over the years most national parliaments have established committees specifically to coordinate and conduct parliamentary scrutiny of EU legislation, thereby increasing the national parliaments' attention to and effectiveness in this role. However, the use of such committees also runs the risk of side-lining EU issues in national parliaments away from the attention of all representatives thereby weakening the exercise of control over the implementation of EU legislation (Bellamy & Kröger 2014). The Treaty of Lisbon did offer the member states' national parliaments increased powers in the form of the Early Warning Mechanism. This means that legislatures can provide the EU with their objections to specific EU policies, and if a sufficient number of member states do so a yellow or orange card is issued and the policy must be reconsidered (European Union 2007, p.149). However, research undertaken by Bellamy and Kröger (2014) indicates that these new powers are unlikely to have any significant impact on the power of the parliaments: it is too little too late and the thresholds required to trigger reconsideration from the EU are impossibly high.

In contrast to most of these ideas for reform, Hix (2008) proposes that no treaty changes should be made in order to improve the democratic quality of the EU. Instead, he advocates gradual and informal changes to the EU institutions' existing patterns of behaviour. Hix believes the EU should adopt what he calls limited democratic politics in order to remedy its problems. This primarily involves changing the informal practices of EU institutions to create room for the competition of political elites for public office and the political agenda, through providing incentives for competitive behaviours (Hix 2008). Limited democratic politics is deemed by Hix to have six desirable effects on democracy in the EU: promoting policy innovation and joined-up policy making; encouraging the formation of cross-institutional coalitions of actors; incentivising media coverage of Brussels activity; enabling the formation of informed public opinion on policies; providing the winners of the competition with a mandate

to pursue their agenda; and enabling those that lose out to recognise the winner's mandate, leading to the formation of a new, political and democratic identity at the EU level (Hix 2008, pp.98–106). However, this suggestion faces the same criticism as the idea of increasing the powers of the European Parliament: it fails to take account of the lack of coherent political parties at the EU level and the collective identity of the European people, both as apparent now as they were thirty years ago, that are necessary for democratic inputs along these lines to be meaningful and effective (Schmidt 2013, pp.13–4).

As highlighted throughout this chapter, the primary reason why the solutions to the EU's problem of input legitimacy proposed thus far have been inadequate in successfully addressing the democratic deficit is because they unproblematically ascribe conceptions of democracy based on the nation state to the transnational level. Adhering to a nation state model of democracy is not going to help in addressing the democratic legitimacy gap in the EU (Abromeit 1998, p.50). This is partly due to the lack of an EU demos in the conventional sense, as alluded to above and discussed at greater length in chapter five (where I argue that this lack of a demos in the usual sense need not be a hindrance to democratic legitimacy in the EU), and the continuing focus of political elites on national political matters, even when operating at the EU level (Beetham & Lord 1998b, p.84). Schmitter goes so far as to declare the application of nation state norms to the EU level not only inappropriate but also counterproductive (2000, p.15). European society is unlike national society. It is territorially segmented in terms of language, culture, economic interests, and even preferences when it comes to democracy (Abromeit 1998, p.35). Whilst it may be argued that it is not unique in this regard (consider Belgium, Canada and Switzerland), no other polity has these issues on the same scale: over 500 million citizens; 28 different and distinct countries (and, arguably, cultures and national traditions); 28 different political and legal systems; 24 official languages, etc. Thus some of the proposed solutions discussed above, particularly those concerning deeper integration or more

federalist-based ideas, are highly unlikely to be implemented due to the improbability of agreement being reached between the many institutions and member states.

Scharpf, similarly, argues that the democratic legitimacy of the EU is always going to be found wanting when nation state conceptualisations of democracy are applied to the EU level (1999, p.12). It is perfectly reasonable to suggest that there may be justifiable differences between the appropriate standards of democratic legitimacy at the national and transnational levels (Lord 2004, p.6). Innerarity argues that the complexity inherent in the EU means that applying nation state conceptions of democracy to it unnecessarily simplifies its nature. He notes the dangers of this happening, stating that where analogies are made between the EU and a nation state, “it may well be the case that people fully understand something that is not what should be understood” (Innerarity 2014, p.321). However, Innerarity points out that just because many people understand democracy in nation state terms, this does not mean that democracy as a normative concept cannot or should not be applied to different political arrangements, such as those in the EU (2014, p.308).

Furthermore, and also as highlighted throughout this chapter, each proposal for improving the democratic quality of the EU has different normative conceptions of democracy underpinning it (Abromeit 1998, p.53). Whilst this is not unusual in itself, in terms of the EU’s democratic deficit it hinders progress. The contributors to the debate are talking at cross-purposes and all of the suggestions taken together do not constitute anything coherent (Kohler-Koch & Rittberger 2007, p.3). As Kohler-Koch and Rittberger explain,

“differences in views on EU’s democratic quality reflect long-standing differences in democratic theory about what constitute the central characteristics of and preconditions for democratically legitimate governance” (2007, p.12).

For example, Hix states “democracy means competition for political office and over the direction of the policy agenda” (2008, p.180), leading him to advocate limited democratic politics with direct political competition at the EU level, whereas Bohman defines democracy

in terms of the empowerment of free and equal citizens to change the terms of their common life together (2007, p.2). These contrasting definitions naturally lead to very different conclusions about the most appropriate answer to the problem of democratic legitimacy in the EU.

However, several scholars who arrive at the conclusion that it is problematic to apply nation state or other inappropriate normative conceptions of democracy to the EU level, go on to argue that it is necessary to consider new institutional approaches to address the problem (Schmitter 2000, p.2). This should include, according to some, the opportunity for greater direct citizen engagement and participation (Bohman 2007, p.147). As I will argue in chapter three, a conception of democracy that allows room for the active participation of citizens in their own government is preferable in order to realise as fully as possible the criterion of political equality and the consequent identification of the people as the appropriate source of authority as the basis of democratic legitimacy. Along these lines, Abromeit, after rejecting parliamentarisation, federalism and multicameralism as potential solutions to the democratic deficit, suggests that a system of direct democracy should be instituted in the EU. Her proposal includes two direct democratic vetoes, one to be used by autonomous subnational units where their autonomy is threatened by European integration, and the other for transnational sectoral interests. In addition, the system includes a mandatory EU-wide referendum on any new contractual or constitutional steps (Abromeit 1998, pp.134–5). The general idea of direct citizen participation, however, has only recently been seriously considered by the EU. Though suggestions along the lines of Abromeit's have not been pursued, the idea of an EU-wide referendum has been proposed at various times and locations.

More recently, it has been proposed that a third element of democratic legitimacy should be added to the criteria of legitimate inputs and outputs. There has been little in the way of academic engagement with this concept yet it has significance for the way we consider

democratic legitimacy in the EU and for the potential effect of new institutions of citizen engagement. The idea of throughput legitimacy suggests that it is important, along with input and output, to consider what goes on within the EU's "black box" of governance, that is, how the inputs are translated into outputs (Schmidt 2013, p.5). It considers the extent to which the processes of governance are effective, accountable, transparent and inclusive, making it a distinct criterion to consider alongside the participation-oriented input legitimacy and performance-oriented output legitimacy (Schmidt 2013, p.7). Building on the earlier descriptions of input and output legitimacy as government *by* and government *for* the people, throughput legitimacy can be characterised as government *with* the people (Schmidt 2013, p.5). Schmidt highlights that throughput legitimacy does not have the same contingent effects upon input and output legitimacy that the latter two can have upon each other. Instead, she argues that a high level of throughput legitimacy will often go unrecognised, but a low level can delegitimise the entire political system, including inputs and outputs (Schmidt 2013, p.9). Perceptions of incompetence, corruption or excluding certain perspectives can delegitimise the system in throughput terms, negatively affecting also its perceived levels of input and output legitimacy.

The EU can be seen to have attempted to enhance throughput legitimacy, perhaps to make up for its lack of input legitimacy, with its emphasis in recent times on the involvement of civil society in policy making, attempting to make the process of governance more accountable, transparent and inclusive (Schmidt 2013, p.15). However, Schmidt herself argues that enhancing civil society stakeholder engagement in policy making cannot make up entirely for the lack of input legitimacy in the EU: it is not the case that all citizens recognise the role of civil society and can actively get involved in transnational civil society movements themselves (Schmidt 2013, p.15). As already noted, enhancing throughput legitimacy cannot make up for a lack of input legitimacy, though it can help to supplement it (Schmidt 2013, p.18). It remains

the case therefore that the EU is in need of additional means to facilitate citizen engagement with policy making to enhance both its input and throughput legitimacy.

A lengthy period of debate about how to enhance the EU's democratic legitimacy among its institutions has led to the launch of a new participatory tool: the ECI. The ECI has potential relevance for both input and throughput legitimacy. Providing the space for citizens to clearly express their policy preferences is obviously of relevance to the concept of input legitimacy, but also the transparency, accountability and inclusiveness it can potentially bring to the EU policy making process is of significance for the concept of throughput legitimacy.

The ECI

Since its launch in 2012, the EU's institutions have repeatedly claimed that the ECI is part of the solution to the EU's democratic deficit. European Commission Vice President Maros Šefčovič, who was responsible for the ECI at the time of its launch and during its first two years, expressed time and again the potential of the ECI to democratise the EU through giving citizens a greater opportunity to influence its policy making. As noted in the introduction, the EU institutions were, in the early days of the ECI, confident in the potential of this mechanism to impact positively upon the democratic legitimacy of the EU and resolve some of the EU's problems of democratic legitimacy as outlined above.

It is fairly evident, given their past attempts at increasing their democratic credentials, that the EU institutions have not been oblivious to the growing concerns over the democratic quality of the system. However, it was not until 2001 that the issue of democratic legitimacy in the Union was really brought to the forefront of debates about the future of European integration, as the EU was looking towards significant enlargement through the accession of Central and Eastern European member states. The Treaty of Nice, signed in 2000, highlighted the need for further reform of the EU and called for the next Intergovernmental Conference (IGC), to be held in 2004, to discuss four specific areas of reform: subsidiarity and the clarification of division of

competences between the EU and the member states; the status of the Charter of Fundamental Rights; the simplification of the Treaties, and the role of the national parliaments in the EU framework (European Union 2001). The agenda for the future meeting was established in a Declaration on the Future of Europe, prepared by the member states in 2001, which highlighted among other things their commitment to seek ways of improving and monitoring democratic legitimacy and transparency in the EU. The Laeken Declaration, as the document came to be known, raised many questions to be addressed not at an IGC but at a Convention comprising many actors and stakeholders; a significant break from the traditional methods previously used to re-evaluate and determine the future trajectory of the EU (European Union 2001, pp.85–6). The Declaration built upon the Commission's July 2001 White Paper on Governance in Europe which proposed increased accountability, transparency, participation, effectiveness and subsidiarity as the fundamental principles of good governance and consequently as the core objectives of the EU of the future (European Commission 2001). In a similar vein, the Laeken Declaration's sixty questions and points of discussion for the upcoming Convention on the Future of Europe committed the EU to pursue more democracy, transparency and effectiveness.

The first plenary session of the Convention was held on 28 February 2002, tasked with drafting a European Constitution to be decided upon by a subsequent IGC. Present at the Convention venue were representatives of Mehr Demokratie⁹, Carsten Berg and Michael Efler, who were tasked with lobbying the members of the Praesidium, the group of individuals participating in the negotiations of the Convention, to pay sufficient attention to the questions of the Laeken Declaration related to democratic legitimacy and the principles of accountability and participation as highlighted in the 2001 White Paper. They had two policy objectives: to get the Convention members to commit to a Europe-wide referendum, or at least simultaneous

⁹ Mehr Demokratie claims to be the largest NGO campaign for participatory and direct democracy in the world. (Mehr Demokratie n.d.)

national referendums in each member state, on the output of the Convention, that is, the EU Constitution (reminiscent of Abromeit's (1998) proposals as noted above), and second to have included in the constitutional treaty some means of involving citizens in the EU's law-making procedures. Despite gathering support for the referendum on the outcome of the Convention from over seventy of its members, this first objective did not survive (as several Convention members saw it as "too radical" (Brand 2012a)) and it was not long before all attention was switched to campaigning for Berg and Efler's second objective: what came to be known as the ECI (Berg, interview). This idea also came up against much resistance from many members of the Convention, as Berg noted "several members of the Praesidium, including high profile representatives of member states and EU institutions, were staunchly opposed" (Berg, interview). As a consequence, it was initially rejected from the Draft Constitutional Treaty. However, with the support of several individuals within the Convention who pursued the cause from within, such as Jürgen Meyer, a member of the German national parliament, and Alain Lamassoure, a French MEP from the European People's Party (Brand, 2012a; de Lasteyrie, interview), towards the end of the negotiations a citizens' right of initiative was written into the constitution under Article I-47 'The Principle of Participatory Democracy'. As Lamassoure's parliamentary assistant commented, "the ECI was the least ambitious [proposal], hence it was the only one that was adopted" (de Lasteyrie, interview). Nonetheless, this constituted a significant achievement of the campaigners who had lobbied tirelessly for attention to be paid to the contents of the White Paper and the Laeken Declaration, particularly the principles of participation and democracy, within the Constitutional Convention (Berg, interview).

Following the rejection of the Treaty Establishing a Constitution for Europe by the French and Dutch populations in referendums in May 2005, the idea of the citizens' initiative made its way into the subsequent Treaty of Lisbon that was drafted in 2007 following a 'period of reflection'. The Lisbon Treaty contained an article (Article 11 under Title II: Provisions on Democratic

Principles) with identical wording to that included in the Constitutional Treaty under Article I-47:

“Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.” (European Union 2004, p.35; European Union 2007, p.15)

Following the signing of the Lisbon Treaty in 2007 and its entry into force on 1 December 2009, work began on filling in the details of what this initiative right would look like and how it would work in practice, which had been left open by the Treaty. By 2009 Berg and Efler had already spent several years gathering information and formulating how they envisaged the ECI functioning from an ideal perspective (Berg, interview). An intense period of negotiation between the different EU institutions and stakeholders on the ECI Regulation took place throughout 2009 and 2010, with civil society representatives, supported by several MEPs involved in the negotiations, lobbying for the simplification and citizen-centred nature of the instrument. The rules and procedures through which the initiative right was to be used were eventually agreed and finalised in Regulation 211/2011 (herein ‘the Regulation’) in February 2011, and the launch date for the first ECIs was set for 1 April 2012.

The details fleshed out in the Regulation mean that the ECI process functions as follows. At least seven citizens of the EU, residing in at least seven member states, are invited to come together to form a Citizens’ Committee with the purpose of inviting the European Commission to propose new EU legislation. The proposal must fall into the EU’s sphere of competence and must relate to the implementation of the EU’s existing treaties: it must not propose anything that would require their reform or that could be deemed “abusive, frivolous or vexatious” or contrary to the EU’s values (European Union 2011, p.4). Once the Commission has verified that the proposed initiative meets the registration requirements the initiative becomes open for

signatures. Each initiative is given one year in which to collect a minimum of one million signatures, online or on paper, from at least seven member states. Each qualifying member state requires a minimum number of signatories to be counted amongst the seven (equivalent to 750 times the number of MEPs of that country). When this threshold is reached, and the signatures have been validated by member state governments, the Commission has three months in which to: meet with the Citizens' Committee; arrange a public hearing in the European Parliament related to the initiative, and adopt a formal response setting out what action the Commission intends to take on the suggestions of the initiative, if any, and why (European Union 2011).

This outcome is rather distant from what was originally envisaged by those campaigning for the ECI in the Convention, for example, the ECI Campaign claims that "it was never the intention and spirit of the members of the European Convention 2002/03, where the ECI instrument was created, to reduce the ECI instrument to secondary law only" (The ECI Campaign 2013). There were several key points of contention during the negotiation process that are worthy of note. First, the Commission initially proposed requesting 300,000 signatures of support for an ECI idea before considering it for registration. However, on the insistence of MEPs and civil society representatives this requirement was removed from the Regulation as it was considered a significant obstacle to the successful implementation of a genuine form of citizen participation in EU policy making (Berg, interview), and has been described as "a red light for Mr Lamassoure [Alain, MEP]" (de Lasteyrie, interview). Second, there was intense debate regarding the required number of states reaching minimum thresholds. The Commission wished to define 'significant' as nine, whereas the European Parliament argued for five, as they saw a lower threshold as indicating a more citizen-friendly instrument and less likely to exacerbate popular frustrations with the EU (Brand 2010). Eventually compromise was reached at seven, or roughly one quarter of the member states.

Third, the inclusion of the requirement for a public hearing to be held in the European Parliament upon the successful collection of one million signatures was a significant achievement of the MEPs and civil society representatives involved in the consultation on Regulation 211/2011, as the idea of a public hearing was not in the Commission's original drafting of the Regulation (Plottka 2014, p.112). Additional aspects of the Regulation that became issues of contention between the negotiating parties included civil society representatives hoping for: reduced data collection requirements for signatures (i.e. no ID or passport numbers) and for the requirements to be harmonised throughout all member states; an extended period in which to collect the million signatures such as eighteen or twenty four months in order to have a greater chance of success and to generate significant debate around the topic, and an extended scope of legal admissibility to include primary law and treaty revisions, to name a few. These changes continue to be campaigned for (Berg & Thomson, 2014; Berg, interview). However, it was understood that there was a limit to the extent to which the Council of Ministers and the Commission would be willing to concede to the MEPs and civil society representatives and the Regulation was as simplified as far as possible at that time (Berg, interview; de Lasteyrie, interview). As commented by one interviewee, "everything wasn't perfect but we couldn't get more" (de Lasteyrie, interview).

At the time of writing, 36 initiatives have been registered with the Commission, of which eleven have been withdrawn by their organisers (and four of those withdrawn later re-registered), though there have also been 20 initiative ideas that have been refused registration.¹⁰ Just three initiatives have succeeded in collecting the requisite million signatures from at least seven member states. The registered initiatives have varied significantly in terms of the issues they raise, origin of the campaign and level of support and funding. In chapter four I set out in greater detail how the ECI has been used in its formative

¹⁰ See Appendix 1 for all initiatives registered and refused registration 01/05/2012 to 31/12/2015.

years, and introduce the cases that are investigated in greater depth throughout the thesis in order to answer the question of its impact on the democratic legitimacy of the EU.

Conclusion

In this chapter I have identified the key features of the debate regarding the EU's democratic deficit. By highlighting the distinction between input and output legitimacy and the many arguments that surround the claims made about the deficiency of democracy, I have shown that the primary source of the democratic legitimacy gap is argued to come from the lack of democratic inputs into the system, as the limited role of national parliaments, the weak European Parliament and the lack of choice over the direction of the EU do not leave the people of Europe a sufficient role in influencing the policies that affect them on a day-to-day basis. As it is impossible to make up for these input deficiencies through increasing the democratic nature of outputs, it is the area of democratic inputs that, it is asserted, must be addressed if the EU's democratic legitimacy is to be improved. The significant links between democratic inputs and outputs should not be ignored, however, and the recently added concept of democratic throughput should also be considered. As I have argued, many of the solutions to this problem proposed so far have proven inadequate due to their unproblematic ascription of nation state conceptions of democracy to the EU level, which is necessarily a different type of polity that therefore requires adjusted standards of democracy. One suggestion that has gained momentum within the EU in the last 15 years however is to increase the direct participation of citizens in EU policy-making, as highlighted as an objective in the Treaty of Nice and subsequent Laeken Declaration.

A key experiment in pursuit of this solution was launched in April 2012: the ECI. Whilst the process from the idea of a right to initiative to the implementation of the Regulation underpinning the instrument was fraught with contentious negotiations and compromises, in its early days the EU institutions expressed unrestrained optimism about the ECI's potential to

resolve some of the EU's problems of democratic legitimacy. The question is thus raised of whether the ECI can live up to these expectations. Given that discussions in the existing literature do not base their arguments upon an agreed upon definition of democracy, or seek to simply transpose institutions from the nation state to the EU level, in the following chapter I consider from a normative perspective how the potential impact of a particular instrument on the democratic legitimacy of a complex polity such as the EU might be assessed. I develop the necessary criteria to evaluate the impact the ECI can have on the democratic legitimacy of the EU, and go on to apply these criteria to this question by reflecting on the experience of the first few years of the ECI's existence.

Chapter 3: A Theoretical Framework for Evaluating Democratic Legitimacy

In the introduction I defined democratic legitimacy as a political system that that recognises the people as the appropriate source of authority, considers the protection of equal democratic rights to be the appropriate ends of government, and gives the people the opportunity to consent to the exercise of their own authority and hence expects them to accept its outcomes. This definition leaves open the question of how this concept can be operationalised in order to determine the presence or absence, or extent of, democratic legitimacy of any particular political system, and how it can be put into practice. Some argue that democratic legitimacy is best achieved through representative institutions, and others through participatory democratic means. I argue that democratic legitimacy is best achieved in a political system which does not favour one model over the other, but where institutions encapsulating different variations of democracy are combined. The systemic turn in deliberative democracy has, furthermore, taught us that combinations of institutions can cumulatively enhance or detract from the democratic legitimacy of the system overall, depending on each institution's (formal or informal) interaction with the other elements of the system. In order to evaluate how one institution affects the democratic legitimacy of the whole system, there are three criteria that derive from the definition of democratic legitimacy that should be considered: inclusion, impact and issues.

In this chapter, I defend my assertion that democratic legitimacy is best achieved in a political system where participation and representation are combined by highlighting the flaws in the arguments of representation as democracy on the one hand and participation as democracy on the other, before describing the three evaluative criteria of inclusion, impact and issues, and explaining why they are appropriate for evaluating elements of a democratic system from a systemic perspective. Finally, I demonstrate the appropriateness of these criteria by

considering the impact of referendums, one particular mechanism of participatory democracy, on the democratic legitimacy of the representative democratic systems in which they are embedded.

Participation within democracy¹¹

There has been a plethora of frameworks put forward as ideal democratically legitimate political systems, the majority of which fall into one of two broad camps depending on how the role of the citizens is viewed: participatory or representative democratic systems. Despite the possible usefulness of the distinction between representative and participatory democracy, both clearly have their limitations, and consequently, I argue that the dichotomy is misleading and unhelpful. Several scholars have highlighted the arbitrariness of the categorisation, including Smith (2009, p.140) and Budge, who proposes a continuum of democratic models from the purely representative to the purely participatory and argues that no pure form of either model actually exists. All real world democratic systems fall, according to Budge, somewhere on the scale between the two ideal forms (1996, pp.43–45). Saward, similarly, criticises the dichotomy of representative and participatory democracy as frequently overemphasised, and highlights that in the contemporary world participatory democratic institutions require representative institutions in order to persist. Representation, he argues, is not a second best option but a necessity for democracy, and participatory institutions must be supported by representation (Saward 2010, p.162). In reality it is unlikely that neither pure representative nor pure participatory democracy can, or perhaps should, exist. Whilst pure participatory democracy appears preferable for realising democratic legitimacy, it is likely that it must coexist with elements of representative democracy to be practically achievable, and this is not necessarily merely a compromise since representative democracy has been argued to have normative value in and of itself (Plotke 1997; Urbinati 2006; Kateb 1981). Here I set

¹¹ The headings 'Participation within Democracy' and 'Participation as Democracy' emerge from a distinction made by Weale (2007, pp.101–128).

out the arguments that have been put forward for pure representative and pure participatory democracy, and highlight the limitations of both of these models.

Representation as democracy

Representation as democracy is primarily about electing representatives to make the laws for the political society or community. Representative democracy is defined by Budge as “the election by adult citizens of deputies or representatives who will then form a legislative assembly with the dual functions of electing and controlling a government, and deciding on specific policies” (1996, pp.46–47).

The main argument put forward as to why representation is the best means to ensure democratic legitimacy is that representation is key to the realisation of autonomy, though, as mentioned below, theorists such as Kateb and Plotke are likely referring to a specific conception of autonomy, as in Berlin’s (1969) negative liberty, with which other theorists may disagree. Kateb’s moral critique of direct democracy and promotion of representative democracy supports this claim. In his opinion, direct democracy instigates the “death of autonomy”¹² (1981, p.373). Consequently, he deems representative democracy to be morally distinctive in its commitment to respect the boundaries of individual citizens, and the way in which it helpfully entrenches the separation of the state from wider society (akin to the public and private distinction of classic liberals such as J. S. Mill (1991)) (Kateb 1981, p.373). For Plotke, in a similar vein, the contextual nature of representation, its non-identity and the requirement of recognition from others, facilitates the creation of “a political person with a significant degree of autonomy; the capacity to choose a representative; and the capacity to make and sustain distinctions between political and other practices” (1997, p.31). Urbinati, also, argues that representative democracy “is not an oxymoron” (2006, p.4), but that it is

¹² Kateb’s moral critique of direct democracy is discussed in greater detail below in the section ‘Limits to Participation as Democracy’.

fundamental to the realisation of political equality. This is because she sees two key features of representation, representativity and advocacy, which she argues

“are based upon a type of equality that yields the democratic promise that we shall live in a legal and social order in which all of us are treated as equals although (and because) we are different, and in which we all have a chance to make our voices heard and heard effectively.” (Urbinati 2006, p.48)

Along with ‘independence of spirit’, which can also be called autonomy (similarly to how Plotke used the term), and defined as “the positive expression of independence in the face of personal and impersonal authority”, Kateb identifies two additional ‘moral phenomena’ that appear in societies with representative democratic traditions and traces these back to the existence of an electoral system for filling the offices of political power: the politicisation and consequent democratisation of all relations of life, and the overcoming of diversity caused by the necessarily partisan nature of representative democracy (1981, p.360). These three phenomena are considered more commendable than the moral phenomena associated with direct democracy, and consequently representative democracy is deemed morally superior to any other form of government.

It has also been argued that citizens should be discouraged from political participation between elections, maintaining their status as the appropriate source of authority by simply controlling who are to be their representatives. The establishment of particular decision making procedures constituting representative democratic institutions ensures the sustainability of democracy (Plotke 1997, pp.31–2); as Weale states, in order to maintain the stability of the political system the citizens should “refrain from back seat driving” (2007, p.102). This view is shared amongst those who fall into Held’s ‘competitive elitism’ model of democracy (2006, p.157). For example, for Schumpeter, citizens are too incompetent and irrational to participate effectively in politics beyond electing representatives (2010, pp.235–

6). "The voters outside parliament must respect the division of labour between themselves and the politicians they elect", therefore refraining from giving their representatives instructions once elected to office (Schumpeter 2010, p.263). Schumpeter states that

"the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the means to decide by means of a competitive struggle for the people's vote." (2010, p.242)

The purported benefits of this definition of democracy include its potential to enable distinctions to be made between democratic and non-democratic governments, its affirmation of the importance of competition and leadership for democracy, the way in which it provides for both the selection and ejection of governments, and its raising of the important issue of consent (Schumpeter 2010, pp.242–244). For Kateb, Plotke and Schumpeter, therefore, a system of representation is the best means to democratic legitimacy. Whilst Plotke saw representation as "not an unfortunate compromise between an ideal of direct democracy and messy realities" (Plotke 1997, p.27), for Schumpeter representation was the only possible means to achieving democratic legitimacy.

Many other authors adopt representation as a key element of democratic legitimacy on the basis more simply of its practicalities, and even somewhat out of habit. Proponents of liberal democracy, defined by Held as "a cluster of rules and institutions permitting the broadest participation of the majority of citizens in the selection of representatives who can alone make political decisions" (2006, p.94), often cite the necessity of electoral democracy for practical reasons. For Montesquieu (1914, p.165), Madison (2009, p.52) and J. S. Mill (1861, p.69), for example, representation is the best means to overcome the impracticalities of direct democracy, which, they argue, simply cannot function in the state context due to problems of numbers, physical limitations and instability, among others. In their assessment of the democratic legitimacy of the EU, Beetham and Lord also talk in terms of liberal democracy in order to fulfil their criteria of democratic legitimacy. The third criterion of democratic

legitimacy, legitimation, is achieved through the electoral process as a straightforward means for the expression of consent to legitimate authority (Beetham & Lord 1998b, p.9).

With regard to defining democracy in representation terms out of habit, Pitkin, in her seminal work *The Concept of Representation*, simply equates democracy with representative government, perceiving the relationship to be entirely unproblematic and merely noting that “institutions and practices which embody some kind of representation are necessary in any large and articulated society” (1967, p.2). Reflecting on this almost forty years later, and in realisation of the limitations of her earlier work, Pitkin states: “[I]t seemed axiomatic that under modern conditions only representation can make democracy possible”, thereby highlighting her earlier self-identification in the representative democrat category simply due to it being the status quo (2004, p.336). Whilst Pitkin later heavily criticises representation and her earlier position on the topic, as highlighted below, the realisation that she accepted it as democratic due only to its constituting the norm in the modern world is significant. Representation is argued to be the most appropriate means to democratic legitimacy due to, therefore: its moral superiority compared with other systems in terms of it being the most effective means of achieving individual autonomy and equality; its ability to ensure and maintain political stability; its practicalities, and simply its being the status quo in modern democratic societies.

However, there are reasons to believe that a pure form of representative democracy, as advocated by Kateb, Plotke and Schumpeter, may not be the most effective means to maximising democratic legitimacy. Liberal democracy and its emphasis on representation, as discussed above, is precisely what Barber, in his fierce advocacy of participatory democracy, goes to great lengths to criticise as ‘thin’ democracy. Barber sees the concept of representation as incompatible with freedom, equality and social justice (1984, p.146). This is the complete opposite of Kateb’s argument, which stipulates that it is instead direct

democracy (a form of participatory democracy) that impinges upon freedom and autonomy. It is however doubtful whether Barber would be deterred by this criticism as he emphasises the interdependency and community of citizens rather than their individual autonomy (1984, p.231). It is likely, in addition, that Barber and Kateb are referring to different conceptions of freedom. Based on the distinction between two types of liberty by Berlin (1969), Kateb can be seen to be using the concept of freedom in terms of 'freedom from', or the absence of barriers to individual action, as in Berlin's negative liberty, whilst Barber is contemplating more a 'freedom to' idea, in which freedom requires the presence of something, for example the legal provision of rights, as in Berlin's positive liberty¹³.

These potential cross-purposes notwithstanding, Barber goes on to criticise representative, 'thin', liberal democracy on the basis that its foundations in equal rights protection and the concepts of original positions or states of nature is the equivalent of basing the arguments "on sand" (1984, p.43). Barber argues that the assumption that individuals are born with absolute rights that it is democracy's role to protect is impossible to prove. Individuals could instead be born with absolute obligations to each other, and that rather than the aggressive individuality presupposed in liberal democracy, there is instead an "essential human interdependency that underlies all political life" (Barber 1984, p.24). He sees liberal democracy as a sort of oxymoron: "As the defence of liberty grows rich and powerful, the theory of democracy grows impoverished and thin" (Barber 1984, p.79).

In addition, the plethora of models or typologies of representation that have emerged in recent times, such as within the dialogue of Mansbridge (2011; 2003) and Rehfeld (2011; 2006; 2009), have been criticised on several grounds by Saward. Most important of these criticisms is that the comprehensive typologies distract from what actually happens within representation

¹³ Berlin's distinction between negative and positive freedom is not without criticism, despite its usefulness for the purpose here. For an alternative see Philip Pettit's (1997) freedom from non-domination, which places domination (the capacity to arbitrarily interfere in the decisions of others) as the antithesis to freedom and autonomy, in contrast to Berlin's emphasis on the interference itself.

by focusing too much attention on defining what representation is, even though this typology defining is often undertaken in a very normative and moralising tone (Saward 2010, p.33). In addition, and of significant relevance to this thesis, the models presented are too often limited to national contexts, emphasising elections and legislatures to the neglect of a consideration of representation as a concept that could be applicable to the democratic legitimacy of less conventional political contexts. These typologies thus overemphasise the status quo without questioning its appropriateness for achieving democratic legitimacy.

Participation as democracy

In contrast to the proposals of Schumpeter and other advocates of representation, limits on the extensive participation of citizens are difficult to justify, in theory, due to the very definition of democratic legitimacy (Budge 1996, p.1). If democratic legitimacy requires that the people are the appropriate source of authority, then why should they be excluded from participating in the exercise of authority except for once every four or five years when an election comes about? As Held asks of Schumpeter, “if the electorate is regarded as unable to form reasonable judgements about pressing political questions, why should it be regarded as capable of discriminating between alternative sets of leaders?” (2006, p.154). Budge succinctly summarises this point when he states: “Representation does not negate the need for popular consent and participation” (1996, p.12).

Much of the literature proposing models of pure participation finds its basis in the arguments of Rousseau who, as summarised by Weale, believed that “in the absence of participation there can be no democracy”¹⁴ (2007, p.101). For Rousseau, individuals in a state of nature create a social contract for their own protection and preservation. The social contract “produces a moral and collective body which is composed of as many members as the

¹⁴ However, it must be noted that, whilst Rousseau used the term ‘democracy’ to mean committing the charge of government to the whole people, maximising the role of the citizens in their own rule, he deems this unsustainable. He states: “If there were a nation of gods, it would be governed democratically. So perfect a government is unsuited to men.” (1762, p.68)

assembly has voices, and which receives from this same act its unity, its common self, its life, and its will”, that is, the general will or common good of the society (Rousseau 1762, p.15). It is the general will that determines the law of the society, and “the law being nothing but the declaration of the general will, it is clear that in their legislative capacity the people cannot be represented” (1762, p.97). Indeed, Rousseau speaks out ardently against representation (and in favour of participation), when he states:

“Every law which the people have not ratified is invalid; it is not a law. The English nation thinks that it is free, but it is gravely mistaken, for it is so only during the election of Members of Parliament; as soon as they are elected, it is enslaved and counts for nothing. The use which it makes of the brief moments of freedom renders the loss of liberty well-deserved.” (1762, p.96)

Therefore, Rousseau advocates individuals determining for themselves the laws that they will follow, based on their innate knowledge of what is in the best interest of the whole society. This emphasis on self-government and an active citizenry is what distinguishes Rousseau as a participatory democrat, and as the figure to which many authors look to justify their arguments for increased citizen participation.

Advocates of maximum popular participation as the most effective way to realise democratic legitimacy can be subdivided into two groups according to the nature of the arguments they make. Several scholars argue that participation is important in order to maximise the autonomy of individuals in exercising their political authority, whilst others argue that the developmental effects of participation are what makes it so important for democratic legitimacy.

Participation for autonomy

First are those who argue that maximising popular participation is the best way to realise democratic legitimacy as it is the most obvious way to ensure the autonomy of the people as the appropriate source of political authority. Autonomy can be defined in this sense as the ability to prescribe a law to oneself (Weale 2007, p.108), a different use of autonomy from the

one used to argue in favour of representation as described above. Dahl, for example, points out that the logic behind the concept of political equality, which is inherent in my definition of democratic legitimacy, provides ample reason to strive for maximum autonomy and participation in politics (1998, p.10). Pitkin (2004), on similar grounds to Barber's argument against liberal democracy noted above, has criticised her own earlier approach to representation by highlighting Rousseau's argument for the incompatibility between representation and democracy. She has thereby repositioned herself as an advocate of participatory democracy having previously equated democracy with representation. Pitkin summarises Rousseau's argument when she says that "freedom requires the active, personal participation of all, assembled together, jointly deciding public policy. It is therefore incompatible with representation" (2004, p.339). Pitkin goes on to suggest that representation has come to supersede and subsequently replace democracy: "despite repeated efforts to democratise the representative system, the predominant result has been that representation has supplanted democracy instead of serving it" (2004, p.339). Consequently, she argues in favour of Arendt's idea of highly participatory direct democracy at the local level, which she perceives as having the potential to save democracy from representation's clutches (Pitkin 2004, p.341). This conclusion has many features in common with that of Barber who argues that

"democracy, if it is to survive the shrinking of the world and the assaults of a hostile modernity, will have to rediscover its multiple voices and give to citizens once again the power to speak, to decide and to act." (1984, p.311)

Whilst Pitkin and Barber, among others, do not entirely disregard the practical usefulness of representative democracy, they advocate maximum popular participation as the best means to achieve autonomy and political equality.

Furthermore, Dryzek also argues that liberal capitalist democracy, with its self-interested rational individuals and emphasis on the aggregation of interests, is unsustainable because

rational egoist individuals, as presupposed by (or even, according to some, created by) the model, end up subverting democracy (Dryzek 1996, p.145). The future of democracy, in Dryzek's view (which is consistent with those of Pitkin and Barber), lies in the acceptance of an alternative to economic rationality. This comes in the form of Habermas' communicative rationality, that is, a belief in the possibility and desirability of free linguistic interaction between competent individuals, who are not involved in strategising or hierarchies, and with a focus on reciprocal cooperation (Dryzek 1996, p.108). Such a sense of communicative rationality is most effectively institutionalised in mechanisms of deliberative democracy (Dryzek 1996, p.146). On this basis, the way to rescue democracy from capitalism's clutches, in Dryzek's opinion, is to encourage a greater role for civil society in political decision making. This involves fostering an environment in which governments are keen to turn to participatory or, preferably and more specifically, deliberative mechanisms when they face confusion or intense disagreement on an issue, and the growth of public spheres which have great potential to increase democracy and which are usually deliberatively democratic in character (Dryzek 1996, pp.149–150).

Barber, following his scathing critique of liberal democracy and its emphasis on representation, advocates participatory democracy, which he labels 'strong democracy'. This is defined as:

"Politics in the participatory mode where conflict is resolved in the absence of an independent ground through a participatory process of ongoing, proximate self-legislation and the creation of a political community capable of transforming dependent, private individuals into free citizens and partial and private interests into public goods." (Barber 1984, p.132)

This conception of democracy stresses community; a sense of politics done *by* citizens rather than *to* them (as in representative democracy); responsibility of citizens to themselves and each other; resolution of conflict through cooperation achieved in public participation, deliberation and education; and the absence of any pre-political truths or assumptions of natural rights (Barber 1984, pp.132–137). It is clear to see, therefore, how this is in stark

contrast to liberal democracy with its emphasis on rights to life, liberty and property, and the reliance on the electoral process to legitimate political authority, which Barber condemns. In Barber's view, consistent with my definition of democratic legitimacy where the people are identified as the appropriate source of authority, political authority rests with the citizens themselves, who engage in political talk, decision making and common action on the basis of the decisions collectively made (Barber 1984, p.173). For Pitkin, Dryzek and Barber, therefore, building on the work of Rousseau, participatory democracy is the best means to achieve autonomy and political equality, which in turn is a means to a democratically legitimate end.

Participation for development

From an alternative point of view, participation is the most preferable form of democratic legitimacy due to its developmental effects. An advocate of participatory democracy in this sense is Pateman. She goes to significant lengths to criticise what she calls 'the contemporary theory of democracy', which provides a very narrow role for participation: solely at the point of voting to elect representatives as in the view of Kateb and Schumpeter, for example (Pateman 1970, p.14). This contemporary theory, Pateman argues, is based on a misconception of what 'the classical theory' of democracy. She goes on to demonstrate this through her analysis of the work of Rousseau and J. S. Mill which advocate a much wider role for popular participation in the political process (1970, p.42). For Pateman, it is the educative effect of participation that makes it preferable. She presents empirical evidence in support of the 'spillover thesis', whereby participation in one area of life, particularly in industry and the workplace, engenders greater feelings of political efficacy, which in turn create an increased likelihood of participation in other areas of life, including at the national political level (Pateman 1970, p.45). Pateman's work clearly demonstrates a passionate advocacy of participatory democracy and critique of representative democracy with its limited participatory opportunities.

Barber also raises development as a significant benefit of participation, and concurs with Pateman that increased citizen participation can make democracy self-sustaining. As Barber concludes: “The taste for participation is whetted by participation: democracy breeds democracy” (1984, p.265; Pateman 1970, p.42). However, in this developmental view, participatory democracy can be seen as a means to an end other than itself, or other than democratic legitimacy. That is, democratic participation can be considered as a means through which to fulfil the full civic potential of humans (Butler & Ranney 1994, p.12).

However, despite the purported benefits of participation for individual autonomy and personal development, it is impossible to fail to acknowledge the limitations of some of the models put forward by its advocates. From a practical point of view, questions are raised about the feasibility of mass public participation in policy making in the modern world (see above under ‘Representation as Democracy’ for a further examination of this idea). Bohman, for example, describes representation as “a necessity imposed by the size of modern polities” (2007, p.73). It is indeed difficult to imagine a modern polity that does not rely to a significant degree on representative democratic structures due to reasons of practicality, such as geographic and population sizes. Smith has summarised a number of objections that sceptics have posed against increased citizen participation in politics. These include pessimistic views of the efficiency of extensive participation in policy making; the possible exacerbation of pre-existing inequalities in power and influence in different social groups; scepticism among citizens regarding their potential to enact change; and the potential for overburdening citizens with too much autonomy (in the sense of individual freedom) (Smith 2009, pp.15–19). Nevertheless, these practical challenges to increased citizen participation cannot deny the benefits of increased participation for democratic legitimacy.

Kateb (1981), in addition, imposes a moral critique on direct (as a sub variant of participatory) democracy. Not only does he deem representative democracy morally superior due to the

moral phenomena that it, in his view, causes, but he argues that direct democracy causes 'noxious' moral phenomena (Kateb 1981, p.371). This is primarily due to its emphasis, from the Rousseauist tradition, on community. For Kateb, community "discourages independence of spirit (in its twofold meaning) and the sense of moral indeterminacy", because it spells the end of individuality (1981, p.372). This is, therefore a significant criticism of the pursuit of participatory democracy, yet one that is not unsurpassable.

Combining participation and representation: a systemic account

The advantages of participatory democracy for the fulfilment of democratic legitimacy's criteria of equality and autonomy and its practical limitations in a pure form, as well as some of the purported advantages of representative democracy in contrast, have led many scholars to propose democratic systems that incorporate elements of both representation and participation in order to maximise their benefits and minimise their weaknesses. This is the notion of institutional complementarity, whereby different elements, or institutions, of a political system can be combined in a way so that their democratic benefits are maximally complementary; Smith defines institutional complementarity as "the advantages that might be gained through combining innovations to realise increasingly compelling combinations of goods" (2009, p.162). Through institutional complementarity and combining processes and institutions that can bring different elements of democracy and legitimacy into the political system, therefore, the democratic legitimacy of that system can be maximised, as Smith concludes: "Democratic goods can be realised in compelling combinations that embody the ambitions of different theories of democracy" (2009, p.192).

Combining both participatory and representative democratic institutions can, in theory, optimise the democratic legitimacy of a political system. There is some general consensus on this view and consequently the suggestion that innovative participatory devices can be useful supplements to primarily representative political systems is gaining ground (Weale 2007, p.123; Smith 2009, p.140; Dalton, Cain, et al. 2003, p.262). Indeed, this appears to have been

recognised by the OECD (Dalton, Scarrow, et al. 2003, p.3), and many advanced industrial economies in the contemporary world are experiencing what Dalton et al. label a 'participatory revolution', whereby they are striving to increase popular participation in policy making beyond the traditional participation solely in elections (2003, p.8).

As it has been suggested that a combination of representative and participatory elements is highly desirable in a democratic system, the question is raised as to how the two supposedly competing ideals can be combined so as to maximise the democratic legitimacy of a political system most effectively. Resonating with the concept of institutional complementarity is the idea of a division of labour between different parts of the democratic system, with different institutions and processes fulfilling different functions, each with their own strengths and weaknesses and providing the overall system with different elements of democracy.

The systemic turn in deliberative democracy can provide us with a useful framework for evaluating the combination of democratic goods and institutions in terms of the overall democratic legitimacy of a political system. The deliberative systems approach incorporates the useful argument that it is fruitless to analyse institutions for their deliberative democratic quality individually, but rather they should be considered as part of a system, which can be defined as

“a set of distinguishable, differentiated, but to some degree interdependent parts, often with distributed functions and a division of labour, connected in such a way as to form a complex whole.” (Mansbridge et al. 2012, p.4)

As Mansbridge et al. highlight, it is necessary to expand the analysis of democratic quality beyond individual institutions to consider how each affects the system as a whole and how they interact with one another (2012, p.2). The interaction between institutions and processes is of fundamental significance here; the systemic approach offers a holistic perspective, and builds upon some alternative ways of visualising the interplay between different institutions.

Some scholars have argued that different models of democracy should be pursued at different levels of government. Almost thirty years prior to contributing to the democratic systems movement, Mansbridge, for example, provides an account of two systems of democracy necessary in different contexts. She describes adversary democracy, that is, that which incorporates electoral representation, majority rule and an assumption of conflicting interests, hence of a more representative nature, and unitary democracy, which emphasises common interests, consensus, reasoning and mutual respect, therefore with qualities more in line with participatory democracy (Mansbridge 1983, pp.3–4). In Mansbridge’s model, the adversary and unitary elements are located at different levels of government. At the national level, she argues, democracy has to be primarily adversary, that is, representative, because of the size and scale of nation states (see above for the argument of the practical necessity of representative democracy) (1983, p.293). But she also insists that such a national adversary system has to try really to protect interests equally and produce proportional, compromised outcomes when there are true conflicts of interests, thereby proposing a combination of elements of both types of system (Mansbridge 1983, p.300). Smaller units in which unitary democracy can be pursued (i.e. the identification and pursuit of a common good) are practically feasible and desirable at a more local level of government (Mansbridge 1983, p.187). Mansbridge concludes: “To maintain its legitimacy a democracy must have both an adversary and a unitary face,” that is, elements of both participatory and representative democracy (1983, p.300).

Dryzek similarly raises the possibility of different conceptions of democracy being pursued across different locations of government, as he states: “There are many sites in which democracy can be pursued, and different kinds of democracy may turn out to be appropriate to different sites” (1996, p.14). Pitkin’s argument for instituting participatory democracy at a local level as a means to rescue democracy from its overemphasis on representation also suggests that she would favour a similar division between representative and participatory

democracy in local and national contexts (2004, p.341). Therefore, it is possible to combine participatory and representative democratic institutions by dividing the political system spatially, so that the alternative ideals are emphasised in different levels within the system (e.g. participation locally and representation nationally).

A further alternative for combining representation and participation is based on time, or stages of the political process. Dahl, for example, distinguishes between two analytically distinct stages in his theory of the democratic process: “setting the agenda and deciding the outcome” (1989, p.107). It appears feasible, therefore, that the first part of the democratic process, that of agenda setting, could rely on principles of participatory democracy, and the second, decision making, on those of representative democracy, or vice versa. Indeed, Dahl includes ‘effective participation’ as one of his ‘criteria for a democratic process’, part of the definition of which states: “[citizens] must have adequate and equal opportunities for placing questions on the agenda”, which is clearly related to the first stage of the process (1989, p.109). This idea has strong similarities with the depiction of ‘advocacy democracy’ by Dalton et al. (2003). Advocacy democracy is defined as situations where

“citizens directly participate in the process of policy formation or administration (or participate through surrogates such as environmental groups and other public interest groups), although the final decisions are still made by elites.” (Dalton, Scarrow, et al. 2003, pp.10–11)

This therefore also emphasises participation at the early stages of policy making, and representation at the latter, decision making stage. Conversely, Dryzek’s suggestion that representative governments should turn to participatory institutions in times of deep conflict suggests a role for participation in a representative system at a much later stage of the political process, around the decision making stage (1996, p.149).

Saward also proposes dividing political decision making into stages and effectively sequencing different democratic institutions so as best to enact democracy throughout the process. He

identifies four main stages of the decision making process: agenda setting; debate and discussion; the actual decision making, and implementation (as I also do to analyse the ECI's impacts in chapter six) (Saward 2003, p.168). Saward argues that different democratic 'devices', as he calls them, should be combined in a manner across the different stages in order to create a system that incorporates all of the most desired democratic principles, though he does not specify what should occur when. The combination of devices should, simply, establish "a structure of incentives for political actors which reinforces effective and richly mixed conceptions of the basic democratic principles" (Saward 2003, p.171). It is not only the combination of devices that he emphasises but also their ordering in a sequence which best evokes the desired principles (Saward 2003, p.167). It is therefore possible to see how principles of participatory and representative democracy can be combined temporally across different stages of the policy making process.

However, taking a systemic perspective to institutional complementarity can both build upon and have advantages over the more basic ideas of dividing institutions and democratic models over levels of government or stages of the process. Parkinson's systemic model, for example, divides the system up by stage of the decision making process (define, discuss, decide, implement), as in Saward's sequencing, as well as the space in which the action is taking place (from activist networks and bureaucrats to elected assemblies and the media) (2006, p.169). Instituting participatory democracy at one level and representative at another is not always going to be the most effective, or at all practical, solution to achieving democratic legitimacy in every polity. Much could be lost, for example, by restricting a national political system to embodying some idealised form of representative democracy and a local political system similarly to an ideal of participatory democracy. In addition, considering only the order in which the institutions appear in the policy making process may not take into account how each interacts with and affects the others.

The systemic approach to evaluating democratic legitimacy enables the appreciation of more informal channels of democracy than does the division of democratic labour by level of decision making or stage of the process, which tend to emphasise more formal institutions of democracy. Mansbridge et al. highlight four main areas of a (specifically deliberative) system: binding decisions, activities related to preparing for the decisions, informal talk related to the decisions, and formal or informal talk related to common concerns but that are not intended for binding decisions (Mansbridge et al. 2012, p.9). Along with Parkinson's inclusion of activist networks, experts and the media in his model of a deliberative system, this illustrates that the (deliberative) democratic nature of a political system does not rest solely on the formal institutions in place. Smith sums this up by stating that "a thriving democratic polity will entail a range of different modes of citizen engagement, from formal, institutionalised channels through to informal, independent forms of confrontational activity" (2009, p.3).

Visualising a polity in such a systemic manner, in addition, does not necessarily mean ignoring the strengths and weakness of the individual elements, but it can be incredibly useful for appraising the specific parts:

"The idea of a system captures the complex interrelationships among various institutions in any complex modern polity and as such it is a powerful tool for the normative appraisal of institutional norms and practices" (Bohman 2012, p.73).

Due to its more holistic perspective, its emphasis on the interactions between elements of the system and its appreciation of informal as well as formal elements, the systemic approach to considering the combination of mechanisms of representative and participatory democracy is the most preferable.

Criteria for evaluating democratic legitimacy

As previously noted, particular combinations of democratic institutions can enhance, or, in fact, detract from, the democratic legitimacy of the political system as a whole. Mansbridge et al., in their description of deliberative systems, highlight that the relationships between

different elements of the system can be either complementary, whereby two or more democratic legitimacy-lacking institutions can, by existing together, improve the democratic legitimacy of the whole system, or displacing, whereby two or more institutions which are exemplary as stand alone institutions can actually displace other positive aspects of the system, thereby impacting negatively upon the democratic legitimacy of the whole (2012, p.3). It is therefore important, when evaluating the impact of a democratic device on the democratic legitimacy of a political system, to consider how that device might interact with other elements of the system.

Repeating Bohman's quote above, the systemic approach "is a powerful tool for the normative appraisal of institutional norms and practices" (2012, p.73). This highlights the necessity of examining the complex interrelationships between institutions in a political system in order to judge the impact of the individual institution. When identifying criteria for the evaluation of a particular element's contribution to the democratic legitimacy of a political system, this must be borne in mind and each criterion must facilitate a consideration of how the particular device interacts with other democratic mechanisms and channels in the political system in which it is embedded.

Despite, from a theoretical perspective, the combination of participation and representation seeming desirable so as to maximise the democratic legitimacy of a political system, it is therefore possible that particular combinations of institutions can have a negligible impact on democratic legitimacy, or in fact detract from the legitimacy of the system as a whole – the arguments of Schumpeter, Plotke and Kateb about participation supplanting rather than supplementing democracy resonate as a possibility here. On this idea Dalton et al. note that expanding opportunities for participation not only has the potential to improve the democratic process but erroneous or mistaken reforms could seriously damage it (2003, p.250). As Smith states, "institutional design matters," that is, it is meaningless to assume that increasing citizen

participation to complement representative democracy through any means will automatically improve the democratic legitimacy of the political system (2009, p.188). Different institutions based on different principles and different democratic designs can have very different impacts on the political system as a whole, and can bring to fruition a vast range of democratic qualities, or not, as the case may be. Therefore, the extent to which a participatory device can impact on the democratic legitimacy of a representative system and the nature of the impact, that is, whether negative or positive or entirely non-existent, is dependent on various factors that derive from the definition of democratic legitimacy and can be considered from a systemic perspective. These include the mechanism's effect on inclusion, its potential for creating tangible impacts, and the nature of the issues it facilitates.

There are reasons why I have selected these three criteria specifically and have not simply adopted those that have been identified in previous studies by other scholars, such as Dahl (1989), Beetham (1994) or Smith (2009). Prior to his identification of the six democratic and institutional goods he goes on to use to evaluate a range of democratic innovations, Smith highlights the recent disjunction between empirical analyses of democracy and normative democratic theorising (2009, pp.8–9). Empirical evaluations of democracy rarely question the normative nature of the concept, and normative theorising rarely considers its application to practical institutions. Therefore by defining democratic legitimacy in normative terms and specifying how each of the criteria I present are drawn directly from that definition, I attempt to maintain the link between normative theorising of democratic legitimacy and empirical analysis of a democratic institution.

In addition, my criteria of inclusion, impact and issues are not specific to any particular institutional configuration or strand of democratic theory. This renders them potentially applicable to the evaluation of the contribution of any element of any political system to its overall democratic legitimacy. As discussed in chapter two, many of the problems with

attempts to overcome the EU's democratic deficit have arisen as a consequence of a comparison of the EU's institutional structure with that of the nation state, yet these are inevitably different systems that do not necessarily require the same institutional structure to both be considered democratically legitimate. Presenting general criteria therefore is useful in order to account for the inevitable variations in institutions and configurations in different political systems. I contend that these three criteria are the most basic criteria necessary to satisfy the definition of democratic legitimacy I have presented.

This does not mean to say that inclusion, impact and issues are not related to the criteria established and used by other scholars. There are many overlaps between these three criteria and several of those commonly used by others, which I highlight as I set out the specifics of the criteria below. There are, however, some criteria that have frequently appeared in democratic evaluations, such as 'considered judgement' or 'citizen competence' that I do not see as compatible with the definition of democratic legitimacy I have set out. Once I have summarised the criteria of inclusion, impact and issues, and the relationship between the three, I will briefly mention why I do not include others.

Inclusion

In order to fulfil the democratic legitimacy requirements of political equality and the people as the appropriate source of political authority, it is important that each individual has an equal opportunity to affect political outcomes (Warren 2003, p.224). For this reason, it is vital that democratic devices, or mechanisms, are maximally inclusive. Dahl identified 'full inclusion' as a key criterion of democratic governance: he argued that all members must be equally entitled to participate in their own governing (1998, p.38). As Young succinctly states, "a democratic decision is normatively legitimate only if all those affected by it are included in the process of discussion and decision making" (Young 2002, p.23). A democratic mechanism must therefore

be fully and equally inclusive if it is to contribute positively to the democratic legitimacy of the political system in which it is embedded.

Three key questions must be asked of a device in order to determine its inclusivity, as noted by Smith (2009, p.21). First is who counts as a citizen, or how is the demos defined? This must be established in order to be able to assess the extent to which all individuals affected by a decision are able to participate in its formulation. Second is whether any particular elements, sections or factions of said demos are excluded from participation, as this will easily identify whether the device is or is not equally inclusive. Finally, it must be determined whether all of those who do participate in governing have an equal voice in their participation, or, to put it another way, an equal opportunity to influence outcomes. If the rules of the mechanism mean that some participants' contributions carry greater weight than others, even if all have the opportunity to participate, it cannot be said to be equally inclusive.

It is also important to note, on this point, that equality of opportunity to participate may not be sufficient for ensuring democratic legitimacy if the opportunity is taken up unequally within the demos. As Cain, Dalton and Scarrow highlight, skill, knowledge or resource requirements may implicitly exclude some individuals or groups from participating, even though the opportunity to do so does exist (2003, p.262). Actual equality of active participation is then a further criterion against which to assess democratic devices in order to determine their inclusivity, and in turn their contribution to the democratic legitimacy of the political system.

Impacts

In order for a democratic mechanism to have a positive (or, in fact, any) effect on the political system in which it is functioning it must have some impact on political outcomes: it must be consequential. If the people are the appropriate source of political authority, then political outcomes must be influenced and affected by the people's inputs. Smith uses 'popular control' to connote this idea, defining this as "the extent to which citizens are afforded increased

influence and control within the decision-making process” (Smith 2009, pp.22–3). Therefore, since democratic legitimacy identifies the people as the appropriate source of political authority, and as Dahl summarises democracy as “a system of popular control over governmental policies and decisions” (1999, p.20), it is necessary that the people’s participation in the democratic device is meaningful and that the outputs generated by the device are able to have some impact on political outcomes.

Dryzek refers to the authenticity of participation to highlight how the impact of each institution must be substantive, and not merely symbolic (though as I highlight in chapter six symbolic impacts are in some ways also significant, from a systemic perspective) (1996, p.5). The questions asked of democratic devices in terms of their consequentiality must therefore include the extent to which the citizens, through the device, are afforded the opportunity to influence political outcomes, but also, as noted above in reference to inclusion, the extent to which outcomes are affected by the device in practice, as simply providing the opportunity is insufficient to demonstrate the impacts of a particular mechanism. Important also in this regard is that the mechanism meets the objectives it was designed to fulfil: if, for example, the device of referendums is introduced into a political system with the clear objective of enabling popular participation at the decision-making stage of policy making, then it is important to determine whether this device has an effect on the decision-making stage (see below within this chapter for a discussion of the lessons that can be learned from referendums). Answers to these questions will enable a determination of the tangible impacts of a device, and, consequently, its impact on the democratic legitimacy of the political system.

In addition, as emphasised by the systemic approach, it is not only formal but also informal aspects of the system that should be considered when evaluating its democratic legitimacy. Therefore, it is important to assess also the potential informal, indirect impacts of any particular mechanism, beyond those that impact solely on the formal policy making process.

These impacts could be on other elements of the democratic system or the relationship between elements. For example a situation where an increase in the impact of citizen participation on decision making adversely affects the role of representatives in decision making can be envisaged: the impact of the participatory mechanism itself is significant but it could have a potentially negative effect on other parts of the system. Indirect impacts could also occur at different levels of the political system, so that for example an institution at the national level could have positive or negative consequences for democratic legitimacy at the local level, which were not anticipated by the national level institution. Informal impacts could include those on the public sphere or the media, for example, such as the creation of new groups or organisations or public debate, which might indirectly affect the democratic legitimacy of the whole political system. Since these indirect or informal impacts are often unanticipated, it is difficult to identify precisely what they might entail, as they will likely be different in different situations. Nonetheless, it is important to be alert to the potential emergence of indirect or informal impacts that could affect the overall democratic legitimacy of the political system.

Issues

As highlighted in the definition of democratic legitimacy, procedures alone are insufficient to ensure a positive impact of a particular institution on the overall democratic legitimacy of a political system¹⁵: the nature of issues pursued and the consequences instigated by an institution can affect their impact on the democratic legitimacy of the overall system. There are two key ways in which this is the case.

First, the normative justifiability of the issue pursued through a participatory avenue can significantly affect its impact upon democratic legitimacy. There must be some expression of the common interest in policy outcomes in order for them to be considered democratically

¹⁵ See also the preceding chapter for a discussion of procedure and substance in terms of the input and output legitimacy distinction made by Fritz Scharpf (1999; 2009) in the EU democratic deficit literature.

legitimate. Having identified the proper ends of government as the upholding or extending of the basic political rights of all, it is possible to evaluate how issues pursued through participatory institutions can contribute to, or detract from, the overall democratic legitimacy of the political system by considering how the mechanism is used to uphold or advance such rights.

Second, the salience of the issue that is pursued through a participatory mechanism can have significant consequences for its effects in terms of the previous criteria of inclusion and impacts. Defined as the relative importance of an issue in the minds of relevant actors (Opperman & de Vries 2011, p.3), in terms of the level of attention paid to it or the weight attached to it, the more salient an issue the greater the positive effect on inclusion and impact it is likely to have, thereby contributing to the democratic legitimacy of the political system.

It is important to highlight also the relationship between these three criteria. The definition of democratic legitimacy I offer implies that each is logically prior to the next, so inclusion is logically prior to impact, and impact is logically prior to issues. This is because, as discussed in chapter two with regard to democratic inputs and outputs, where political equality in terms of full and equal inclusion in policy making is not achieved (as the people are identified as the appropriate source of political authority), it is difficult to then achieve the proper ends of government. As Bellamy argued, if we focus solely on the outputs from the political system, the ends of government, there is scope for justifying exclusion from the system (2010, p.5), which is incompatible with the political equality inherent in the identification of the people as the appropriate source of political authority. Lord, similarly, reminds us that “public control with political equality – government by the people” (which can be identified with the inclusion and impact criteria) should be the “primary standard”, with “government for the people”, as in the proper ends of government (identifiable with the issues criterion), “an important, but still

secondary test” (2006, p.672). Clearly we see therefore that inclusion and impact must be considered logically prior to issues.

Inclusion is logically prior also to impact since if political equality is not recognised in the inclusion of all in the institution in question, then any tangible impacts of that institution cannot necessarily be considered democratically legitimate. If participation is restricted to a certain group of people then even where they have substantial impacts the democratically legitimate quality of those impacts is highly questionable, as the principle of political equality and the people as the appropriate source of political authority has not been achieved. Impacts are also logically prior to issues, as the extent to which an institution is used to pursue normatively justifiable issues may be irrelevant if that institution has no impacts on the political system, or if those impacts are not the consequence of full and equal inclusion of the people in the innovation in the first place. Therefore, whilst each is a necessary yet not sufficient criterion for democratic legitimacy, it should be considered that each criterion is logically prior to the next, in the order inclusion, impact and issues.

As mentioned above, there are some criteria that have appeared in democratic theorists’ lists of what constitutes democracy and democratic legitimacy, which I do not include here. One such example is the criterion of what Smith terms ‘considered judgement’, which refers to “citizens’ understanding of both the technical details of the issue under consideration and the perspectives of other citizens” (2009, p.12). In Smith’s view, “the legitimacy of citizen participation in political decision making arguably also rests on the capacity of citizens to make thoughtful and reflective judgements” (2009, p.24). Other scholars have referred to something similar as citizen competence or capacity: the idea of a qualification or minimum level of understanding requirement for participation in democratic decision making goes back to the argument of J. S. Mill, who argued for additional votes for the more competent (1861). However, any such suggestion that citizens need to demonstrate knowledge or understanding,

or general capacity to engage with the perspectives of others, is, I argue, incompatible with the definition of democratic legitimacy I have offered. This is because of the principle of political equality on which it is based. Christiano argues that any kind of test of competence for participation cannot be justified as it undermines the public realisation of political equality (2008, p.121), and Dahl, on similar grounds, reminds us that “every adult subject to the laws of the state should be considered sufficiently well qualified to participate in the democratic process of governing that state” (1998, p.78). The criterion of considered judgement or citizen competence is therefore not included as one of the analytic criteria here because it can be considered incompatible with political equality, which underpins democratic legitimacy as I have defined it.

Referendums in representative democratic systems

Political systems that make use of mechanisms of participatory democracy, such as direct democratic devices like referendums, within a primarily representative system can be utilised to demonstrate the application of the three criteria of inclusion, impact and issues as well as to illustrate some of the claims I have made regarding the benefits and potential challenges of combining participation and representation to maximise democratic legitimacy. Referendums, in their many guises, are frequently used in several countries as a supplement to representative democracy (Butler & Ranney 1994, p.13). Lutz, in his discussion of direct and representative democracy in Switzerland, notes that in that context direct democracy (the use of referendums and citizens’ initiatives, as a sub variant of participatory democracy) has always coexisted with representative democracy and the two frequently interact (2006, p.46), and Magleby, in the context of the United States, declared that “the initiative and referendum process, even at best, is a complement to the [representative] legislative process” (1984, p.2). Tolbert and Smith, more recently considering initiatives in the US, found that “the process has positive effects that may enhance the representation and participation of citizens” (2006, p.36). Considering the experience of systems where referendums co-exist with representative

democratic institutions can therefore highlight the purported advantages of combining participatory and representative mechanisms in order to enhance the democratic legitimacy of a political system, and demonstrate how the evaluative criteria I have identified can be applied to determine their impact on democratic legitimacy.

There is no broad consensus on the usefulness of referendums as participatory institutions to enhance the overall democratic legitimacy of a political system. Opinion continues to be divided as to whether referendums, in practice, enhance or undermine democracy. Whilst on the one hand referendums can be a useful means to realising the people as the appropriate source of political authority and political equality more generally, on the other hand, from a systemic point of view, they may simply weaken representative democratic institutions by enabling 'incompetent' citizens to make important decisions (Smith 2009, pp.11–2; Lutz 2006, p.45). Though as I have noted, political equality requires us to consider all citizens competent. The idea of one democratic institution negatively affecting another democratic institution is an important consideration of the holistic, systemic approach to combining institutions as discussed above. Magleby's analysis of initiatives and referendums in the U.S. found that "representative institutions have been significantly altered by direct legislation and direct democracy more generally" (1984, p.196), though he does not specify whether these alterations are positive or negative in terms of democratic legitimacy.

| WHAT IS THE EFFECT OF THE REFERENDUM? | A majority vote is binding | A minimum threshold must be met, or a court appeal is allowed | No binding result, purely consultative |
|---------------------------------------|--|--|---|
| WHO TRIGGERS THE REFERENDUM? | | | |
| The people raise the issue | <p>Liechtenstein: Initiatives. A simple majority outcome of the popular vote makes the citizen-initiated proposal legislation (subject to the assent of the Prince). E.g. 2009 initiative on liberalisation of mobile communication networks.</p> | <p>Switzerland: initiatives. Requires double majority (over 50% support in over 50% of cantons). E.g. 2014 initiatives on abortion and immigration.</p> <p>Italy: citizen-initiated referendums.¹⁶ Turnout must exceed 50%. E.g. 2011 referendums on water privatisation and nuclear energy.</p> <p>USA: state propositions. Courts can rule on unconstitutionality of proposed legislation. E.g. 2012 California ballot proposition 34 on the abolition of the death penalty.</p> | <p>New Zealand: initiatives. E.g. 1998 initiatives on introduction of a written constitution and changes to health spending, 2015 initiatives on the adoption of a new national flag design.</p> |

¹⁶ Whilst Italian citizen-initiated referendums must refer to the repealing of existing legislation, there is no time limit on the legislation that can be referred to so in practice any issue can be raised (for example, the 1981 citizen initiative on abortion referred to the legislation from 1930) (Catt 1999, p.60).

| | | | |
|--|---|---|--|
| <p>The people react to an issue</p> | <p>Switzerland: facultative referendums. Citizens have 90 days to lodge an intention to challenge a piece of legislation. E.g. 2013 referendums on asylum law and increases to road tax.</p> <p>USA: State referendums. E.g. 1988 challenge to legislation on state funding of abortions in Michigan.</p> | | |
| <p>The government raises the issue</p> | <p>France: Referendums on constitution. E.g. 1946 constitutional referendum.</p> <p>Ireland: referendums on constitutional amendments. E.g. 2001 referendum on ratification of the Treaty of Nice; 2015 referendum on equal marriage.</p> | <p>Switzerland: referendums on constitutional amendment. Requires double majority (over 50% support in over 50% of cantons). E.g. 1872 constitutional referendum.</p> <p>Australia: referendums on constitutional amendment. Requires double majority (over 50% support nationwide plus over 50% support in majority of states). E.g. 1999 republic referendum.</p> | <p>UK: referendums. E.g. 1975 referendum on membership of EEC; 1997 devolution referendums; 2011 referendum on electoral reform.</p> <p>Australia: consultative referendums (plebiscites). E.g. 1977 national song referendum.</p> |

Table 3.1: A comparison of the different features of citizens' initiatives and referendums elsewhere in the world.

The specific design or type of referendum in place, as well as the context in which it is embedded, undoubtedly affect how the referendum can contribute to or detract from the democratic legitimacy of the system. Table 3.1, adapted from one by Catt (1999, p.66), summarises some of the different types of referendums that exist around the world. The table highlights the wide-ranging types of referendums that can be found such as those for which the result is binding, non-binding or has a threshold to be binding, or those instigated by the people, or the government. Despite this variety, it is notable that the ECI, even though it shares its name with many of these instruments, is not an ‘initiative’ mechanism in the usual sense, and as such does not comfortably find its own place in the table. The ECI is comparable only to the first stage of the process as undertaken through the Liechtenstein initiatives (where 1,000 signatures of support are required to propose an ordinary law, or 1,500 for a constitutional law), Swiss initiatives (where 100,000 signatures must be collected in support of the proposal), Italian citizen-initiated referendums (requiring 500,000 supporting statements ahead of the public vote) and U.S. state propositions (where requirements vary by state, from 15,000 signatories in South Dakota to over 600,000 in Illinois), when support must be gathered to raise the issue to a popular referendum, in these cases, or the attention of the European Commission, in the case of the ECI. The lack of a deciding vote in the ECI leads Saward to emphasise that “it is a device which may enhance *participatory* democracy, not *direct* democracy” (2013, p.226). This fundamental difference has important implications for the evaluation of the ECI as distinct from these better known initiatives and referendums. These include, for example, the inevitable lack of an organised opposition to a proposal as a consequence of the necessarily two-sided public campaigns on referendum questions (Parkinson 2001, p.135), and the associated media and public attention that this can bring; a lack of opportunity for direct popular control over the outcome of an initiative; and the related expression of popular consent to a particular public policy, which can grant it significant legitimacy. All of these implications are explored in greater depth throughout later chapters.

Notwithstanding the fundamental difference between the ECI and other citizens' initiatives and referendums and the significant implications of this contrast for the evaluation of the ECI, it is evident that similarities remain that render the insights they offer helpful. Where practical evidence of the ECI's impact on democratic legitimacy is thin (as discussed in chapter four), lessons from citizens' initiatives and referendums elsewhere can provide additional support to, or question, the theoretical claims made about the ECI's potential, particularly those with the pre-referendum public support gathering stage. Furthermore, considering initiatives and referendums according to the three analytic criteria I have identified can demonstrate their appropriateness for the evaluation of democratic innovations' effects on democratic legitimacy, and consequently, for their evaluation of the impact of the ECI.

Inclusion

In terms of the first criterion of inclusion, referendums in general terms can go some way to facilitate full and equal inclusion, as is necessary for democratic legitimacy, by providing all citizens the equal opportunity to participate effectively in politics (Smith 1998, pp.xii–xiii; Schiller & Setälä 2013b, p.10). Butler and Ranney, after summarising the arguments for and against participation and representation, much as I have above, note how the use of referendums can maximise the legitimacy of a political system when stating that “direct popular decisions made by referendums have a legitimacy that indirect decisions by elected representatives cannot match” (1994, p.15), presumably because they realise more closely the criterion of the people as the appropriate source of political authority. Dalton et al. also note that from a systemic viewpoint the existence of mechanisms of direct democracy in OECD countries appears to enhance the legitimacy of the political system for these same reasons (2003, p.270).

Butler and Ranney highlight a limitation to the wider impact of referendums, however, as whilst arguing for increased popular participation (inclusion, as such) as an important benefit of the use of referendums, the evidence they collect suggests that referendums do not

necessarily have a positive impact on participation in elections or through alternative channels (1994, p.17). As Smith summarises, although “inherently understood as a populist process, the citizen initiative is no guarantee of mass mobilisation and participation” (1998, p.48): equal inclusion in terms of opportunity does not necessarily equate to full and equal inclusion in practice. The use of initiatives and referendums is frequently dominated by special interests and other pre-organised groups, rather than ordinary citizens¹⁷, which can negatively affect their purported democratic benefits, at least in terms of maximising political participation (Magleby 1984, p.199; Schiller & Setälä 2013b, p.10; Smith 1998, p.xii). Whilst this might be the case, Catt notes that initiatives launched in California and Switzerland by newly formed groups of citizens, i.e. not pre-established organisations, can have success and lead to the formation of new lobbies to pursue their objectives through alternative channels (1999, p.67), thereby potentially having a positive impact on the democratic legitimacy of the political system as a whole. In addition, whilst money tends to dominate use of referendum procedures, there are several cases of the poorer side of the campaign being the more successful, such as the 1993 New Zealand consultative initiative on the electoral system and the liberalisation of marijuana proposition in California (Catt 1999, p.69). It is possible to see therefore how referendums and initiatives can have a positive effect in terms of inclusion on the democratic legitimacy of the political system in which they exist.

Impact

Impacts, I have noted, can refer to both direct effects on the decision making process and indirect effects more broadly. In relation to the former, the use of referendums in representative democratic systems has been argued to have positive impacts on the decision making process. Looking at table 3.1, initiatives that fall into the boxes on the left hand side of the table, where a majority vote is binding, can have the greatest formal consequences. Those referendums that have a majority binding outcome and even those with minimum thresholds

¹⁷ This point is explored in greater detail with specific regard to the ECI experience in chapter five.

for a binding vote give the citizens sole-control over the making of the decision, the third stage in the policy making process (Catt 1999, p.57). Where referendums give the citizens the opportunity to express their direct consent or dissent to the policy in question they have significant legitimating potential (Parkinson 2009, p.15), in terms of the need for opportunities for consent and the exercise of popular control.

Some referendums can also impact other stages of the decision making process. For example, even when referendum campaigns, in particular those that are initiated by the citizens as opposed to the government (as in the top row of table 3.1), are unsuccessful they can be used to bring issues to the attention of legislators and other politicians and therefore give citizens the significant power to shape legislative agendas (Dalton, Cain, et al. 2003, p.261; Smith 1998, p.2; Magleby 1984, p.186). Schiller and Setälä, looking specifically at citizens' initiatives in Europe, argue that these can be important avenues through which CSOs can place important matters on the legislative agenda (2013b, p.2). In a similar vein, Kriesi and Trechsel highlight the potential for initiative campaigns to raise issues that the Swiss representative institutions have failed to politicise, and find that, as suggested by the 'flywheel effect', approximately one third of all citizens' initiatives in Switzerland have had an identifiable impact on future legislation (2008, pp.59–60). Tolbert and Smith also found government policy to be more responsive to popular opinion in US states that use the initiative (2006, p.28).

However, from a deliberative systems perspective, Parkinson has found that citizen-initiated referendums perform poorly at agenda setting in an inclusive sense because they are easily manipulated by a minority of the population, but nevertheless he sees their potential for performing alternative useful roles in a deliberative democratic system (2009). Dalton et al. also note the potential for referendums to have a much broader legislative influence than on the single policy issue at stake (2003, p.254), further demonstrating the positive possibilities of introducing mechanisms of participatory democracy into primarily representative systems.

In terms of the indirect effects of referendums, Butler and Ranney argue that using referendums increases political participation in alternative venues (1994, p.15); in line with the arguments of Pateman and Barber noted above, it enhances the civic virtues of citizens, thereby enhancing inclusion also. As Barber argues, “the initiative and referendum can increase popular participation in and responsibility for government, provide a permanent instrument of civic education, and give popular talk the reality and discipline of power that it needs to be effective” (1984, p.284). In their consideration of referendums and direct democracy in the United States, Tolbert and Smith found the use of the initiative in states throughout the US is linked to increased political participation, in terms of electoral turnout, civic engagement, political interest and political knowledge and understanding, thereby supporting the idea of indirect effects of participation through referendums (2006, p.32). Parkinson, similarly, notes the potential for referendums to generate public debates, which can educate and rationalise citizens and create considered opinions about the common good (2001, p.131). For these reasons, the use of mechanisms of direct democracy within primarily representative democratic political systems has been hailed as a boon to the system’s democratic legitimacy.

Issues

In terms of normative justifiability and the upholding of political rights as a criterion for positive impact on democratic legitimacy, the point about some types of referendums having the potential to result in policies that are detrimental to minority groups is repeatedly made (Smith 1998, p.2). Switzerland’s first successful initiative was anti-Semitic (Catt 1999, p.72). Bell Jnr, the first African American Professor of Law at Harvard Law School, is paraphrased by Magleby as claiming that referendums constitute “democracy’s barrier to racial equality”, as they can be subject to the ‘tyranny of the majority’, raised as a concern by the founding fathers of the U.S. including Madison, whose advocacy of representative democracy is discussed above (Magleby 1984, p.185). Tolbert and Smith similarly found that the initiative process is more

prone to produce laws that disadvantage minorities than those produced in legislatures, though warned that caution should be exercised when generalising this effect (2006, p.32). Examples of American initiatives that have been damaging to minority interests include rejecting propositions intended to end discrimination against homosexuals and refusing the provision of education to illegal immigrants, with the latter in particular constituting a threat to democratic rights (Catt 1999, p.72). Due to this, Magleby claims, the protection of minority rights in the United States is left to the judicial branch of government (1984, p.188). This evidence suggests that referendums are poor at upholding or advancing the equal rights of the people, and thus may not tend to enhance the democratic legitimacy of the political system in terms of the proper ends of government. However, Butler and Ranney state that “if elected representatives are more protective of minority rights than popular majorities voting in referendum elections, the difference is at most marginal” (1994, pp.19–20), suggesting that this is not necessarily a flaw of referendums themselves.

In Switzerland, furthermore, the existence of the facultative referendum procedure is thought to improve the quality of legislation passed even when it is not used, as it encourages legislators to consider carefully the potential reaction to legislation before it is passed, because of the chance it could be challenged by the people (Catt 1999, p.74). Therefore, the true extent to which this gives rise to doubts about the impact of referendums on the democratic legitimacy of a primarily representative democratic system is questionable, and likely is highly dependent upon the specific type of referendum in place and its wider context.

In terms of the second aspect of how issues can affect democratic legitimacy, that is, salience, evidence from the referendums literature supports the idea that where the issue being pursued through the referendum is salient in the minds of the people, inclusion and impact can be enhanced. For example, Hobolt found that when the issue of European integration was salient amongst the public in the period preceding a referendum on the subject, the people

were more likely to be motivated to participate in the referendum (2005, p.105), indicating how salience can lead to increased inclusion in the referendum mechanism in practice. Similarly, Marxer found that participation in popular initiatives in Liechtenstein varied in line with the salience of the issue at hand, as evaluated in terms of media attention and public debate triggered by the issue (2013, p.49). In addition, the low number of legislative outcomes from initiatives in Italy in recent years has been linked to the low salience of the issues concerned (Schiller & Setälä 2013a, p.252). As Schiller and Setälä argue, “citizens’ initiatives may have a major impact in terms of setting the public agenda or the results of popular votes only when the issue in question becomes salient” (2013a, p.254). This therefore indicates also the effect of issue salience on the potential impacts of citizens’ initiatives and referendums.

D. A. Smith sums up the divided opinions on the topic of incorporating referendums into a representative democratic system by describing his book *Tax Crusaders and the Politics of Direct Democracy* as “a cautionary tale against blindly circumventing our representative system of governance in favour of the supposedly more participatory and democratic initiative process” (1998, p.xiv). Experiences of the use of referendums and initiatives can provide a useful insight into the practical benefits and challenges that arise when incorporating participatory and representative democratic mechanisms into one political system, and how the referendums or initiatives can contribute to the overall democratic legitimacy of the system as evaluated using the criteria of inclusion, impact and issues.

Conclusion

Combining elements of representative and participatory democracy into one political system is, I have argued, the best means of achieving democratic legitimacy. Pure models of participatory democracy may be advantageous over representation due to their ability to better fulfil the democratic legitimacy criteria of equality and the people as the appropriate source of political authority, as well as their potential to develop the civic capacities of the citizens, yet their

limitations in terms of practical application render them impossible to implement in the real world. Representation, on the other hand, has its own benefits both normatively and in its practicality and familiarity, but is limited in its overemphasis on individual rationality and less adequate satisfaction of the criterion of the people as the source of political authority. Therefore, a political system that draws on elements from both of these models is likely to be superior in terms of democratic legitimacy to one that exclusively draws on one over the other.

However, it is also the way in which the elements of participation and representation are combined in the system that will affect its democratic legitimacy. Certain combinations of institutions and mechanisms embodying different aspects of participation and representation will, according to the concept of institutional complementarity, bring a range of democratic goods to the system in order to maximise the democratic legitimacy of the system, yet it is also possible that combinations of institutions, irrespective of their individual qualities, could detract from the overall democratic legitimacy. Hence the benefit of taking a systemic approach to analysis, where the interactions between the elements of the system, formal and informal, are taken into account to gather a holistic perspective of the democratic legitimacy of the system.

The three criteria I have identified as necessary for an evaluation of the contribution of any particular element of the system to its democratic legitimacy facilitate such a systemic approach to analysis. Considering whether an institution enables full and equal inclusion, has tangible, direct and indirect impacts on political outcomes, and is used to pursue normatively justifiable and salient issues, indicates how it can affect the democratic legitimacy of the political system in which it exists. A brief consideration of the impact of referendums, in their numerous incarnations, on the democratic legitimacy of the systems in which they exist demonstrates the way that opportunities for greater participation can enhance primarily representative democratic systems. Applying the criteria of inclusion, impacts and issues to

referendums can highlight some of their strengths and weaknesses in terms of contributing to or detracting from the overall democratic legitimacy of their political systems, and further supports the identification of these criteria as appropriate for analysis of an institution's impact on democratic legitimacy.

This chapter has highlighted the need for general criteria of democratic legitimacy that can be applied in any political system to evaluate the democratic legitimacy of its elements. In the next chapter I explore further how these criteria can be applied to the institution in question in this thesis: the ECI. The criteria then form the basis of analysis for the subsequent chapters, each one being dealt with in turn.

Chapter 4: Research Questions, Methods and Cases

Previous solutions to the EU's democratic deficit, I have argued, have been insufficient due to the application of inappropriate conceptions of democracy, those modelled on the institutional arrangements of nation states, to a supranational polity. As Eriksen and Fossum contend, it is necessary to develop a set of democratic standards that are "not confined to the organisational configuration of the state or to the mode of community steeped in the nation" (2012a, p.15). To this end, and emerging from democratic theory and the definition of democratic legitimacy, I have also set out three criteria (inclusion, impact and issues) that should be used to evaluate the democratic legitimacy of a political system, or, more specifically, that should be used to evaluate the contribution of elements of the system to its overall democratic legitimacy, from a systemic perspective.

As I noted in the previous chapter, the criteria that I have identified are more applicable to the EU context than those that I have criticised for being inappropriate to the unique case of the EU because the criteria I have identified are drawn directly from the normative definition and theory of democratic legitimacy, that is, not from a pre-existing institutional arrangement that is thought to be a reasonable incarnation of the definition. As I have stated, the problem with the solutions to the democratic deficit that have been attempted so far is that they attempt to put in place institutions akin to those considered to embody democracy in nation states, such as strong representative legislatures and directly elected executives with the same powers as those found in nation states. The criteria I have identified, conversely, are not based on any particular arrangement of institutions in a political system, and instead are appropriate for use in evaluating the democratic legitimacy of any element of any political system. Their universal applicability means that, therefore, they can usefully be applied to the unique case of the EU and the ECI, avoiding some of the problems I highlighted in chapter two.

In this chapter, I identify the research sub-questions that are to be addressed in the remainder of the thesis, highlighting how they emerge from the theoretical evaluative criteria established in chapter three (inclusion, impact and issues) and how they will be applied to the ECI as the focus of this research. In the second section, I discuss the approach taken to address these research questions, stating why a case study research design is the most suitable for this research and noting the methods of data collection used and why they are appropriate. This leads me to highlight some of the limitations of this research that must be borne in mind when considering the conclusions I reach. However, I also discuss the value of investigating the ECI at such an early stage in its life: whilst initially this may appear to be a limitation of the project in terms of the limited amount of empirical evidence available, I argue that there are significant benefits even to the 'in principle' conclusions I am able to reach. Finally, I explain the selection of four cases of ECI campaigns that provide the majority of the empirical material for the subsequent analysis against the three criteria and provide brief overviews of the cases: *Fraternité 2020 – Mobility.Progress.Europe*; *Single Communication Tariff Act*; *Right to Water*, and *One of Us*.

The research questions

The three theoretical criteria of inclusion, impact and issues lead to the identification of the sub-research questions that should be addressed in this project, which applies them to the ECI. The overall research question is, as previously stated, how can the ECI impact upon the democratic legitimacy of the EU? Here I set out in more detail how the research sub-questions that enable an answer to the overall research question emerge from the three criteria, and how these can be applied to the case of the ECI. A summary of the sub-research questions can be found in table 4.1.

Inclusion

As noted, in order to have a positive impact on the democratic legitimacy of a political system, each element of the system must, in recognition of the principle of political equality inherent in the definition of democratic legitimacy, facilitate full and equal participation of individuals. The question of inclusion can be addressed in terms of the ECI through three main questions (related to those mentioned in chapter three), first, who is granted the opportunity to participate and who, in practice, actively participates? This first question raises the issue of the definition of EU citizenship and the existence of an EU demos, which I have already highlighted in chapter two is problematic. Once it has been identified who counts as an EU citizen, the second question that must be asked is whether there are any particular sections of the EU citizenry who are prohibited from participating, whether officially, i.e. in the ECI's legal basis, or practically. Third, it must be investigated whether all those who do participate in the ECI process have an equal voice, or an equal opportunity to influence political outcomes. What is particularly important to note is the answer to these three key questions (who counts, is anyone excluded and does everyone have an equal voice) must be answered both from the perspective of the theoretical design of the ECI as well as in terms of its practical experiences thus far. In addition, from a systemic perspective, any effects on inclusion in EU policy making beyond those in the ECI should also be borne in mind, as it may be the case that the ECI and its interactions with other institutions within the EU's political system may enhance, or not, the overall inclusiveness of EU policy making.

Impact

Second, for a participatory mechanism to have a positive impact on the democratic legitimacy of the system in which it is embedded, the mechanism must, in some way, have an impact on political outcomes. With regard to the ECI, therefore, it must be asked whether the ECI affords citizens the opportunity to affect policy outputs, both in terms of what consequences the ECI can have in theory, and what impacts it is having in practice. These impacts could be direct, as

in making an observable change to the EU's decision making process (and the analytical stages of the process: agenda setting, discussion and debate, the decision itself, and its implementation), or indirect, as in triggering consequences outside of the ECI process through the theory that participation breeds participation. This second aspect of indirect impacts is important from the viewpoint of a systemic analysis, as the existence of the ECI may instigate or facilitate outcomes from other parts of the EU's political system. The first two sub questions are thus whether the ECI can in theory, and does in practice, have direct and/or indirect impacts. Furthermore, it should be evaluated whether the impacts that the ECI can have, or is having, if any, are the impacts that it was designed to have. Comparing the intended impacts of the ECI, as set out in the Regulation, to the actual consequences it may be having can illustrate whether the effect of the ECI on the democratic legitimacy of the EU is different to what was expected.

Issues

The third criterion against which the ECI must be evaluated relates to the purposes for which it is used. The inclusiveness and impact of the ECI process is one thing, but these procedural elements alone cannot guarantee a positive impact of the ECI on the EU's democratic legitimacy: substance, or content, is also important in terms of democratic legitimacy referring also to the proper ends of government. The effects of the issues of individual ECI campaigns on the democratic legitimacy of the EU need to be determined. There are two potential effects: a direct impact upon democratic legitimacy via the normative justifiability of the issue, as well as on the success of the campaign in terms of its inclusiveness and impacts (the previous two criteria). First, it should be asked whether the ECI can be, and is being, used to pursue normatively justifiable ends, that is, for purposes that are consistent with, or enhance, the democratic rights of all citizens as consistent with the principle of political equality. Second, it must be asked how the issues pursued through ECI campaigns could affect the success of the campaign in terms of inclusion and impact: are the issues it pursues salient? These two

questions of salience and whether the issues pursued through the ECI are normatively justifiable in terms of upholding or extending political rights needs to be determined in order to evaluate its impact on the democratic legitimacy of the EU.

| | | | |
|-----------------------------------|-----------|---|---|
| The European Citizens' Initiative | Inclusion | <ul style="list-style-type: none"> Who is entitled to participate? Who is excluded from participation? Do all participants have an equal opportunity to influence outcomes? | Impact upon Democratic Legitimacy of the EU |
| | Impact | <ul style="list-style-type: none"> Can it have direct impact? Can it have indirect impact? Are the actual impacts the same as the intended impacts? | |
| | Issues | <ul style="list-style-type: none"> How does the issue pursued affect the inclusion and impact of the campaign? Is it used for normatively justifiable ends? Is it used to pursue salient issues? | |

Table 4.1: A summary of the key research questions to be addressed

Case study research approach and methods

The nature of these research questions suggests a case study research design is the most appropriate means to answering them. This is for a number of reasons. First, case studies are particularly useful for addressing questions of how and why events take place and phenomena have the effect that they do, especially when the events or phenomena are contemporary in nature (Yin 2009, p.11). The ECI was launched six months before this research commenced and the process unfolded during the research period, making a case study approach highly appropriate for addressing the question of how it can impact upon the democratic legitimacy of the EU, though, as I will point out below, the fact that the ECI was launched only very recently presented its own methodological hurdles. Second, the case study is well suited to my research questions because of the significance of the context within which the ECI is functioning and the blurred boundaries between the ECI and its context, as I have emphasised through favouring a systemic approach to analysis. As Yin states, “you would use the case study

method because you wanted to understand a real-life phenomenon in depth, but such understanding encompassed important contextual conditions - because they were highly pertinent to your phenomenon of study” (2009, p.18).

The development of theoretical propositions to guide the collection of data is a further feature of case study research that renders it well suited to this research project. The sub-research questions, as already pointed out, are drawn directly from the theory of democratic legitimacy, the core theoretical concept in the central research question. Case studies facilitate analytic generalisation, whereby the findings from the cases enable the generalisation to and expansion of broader theoretical claims. This is in line with one of the aspirations of this research project: to contribute to theoretical discussions of the EU’s democratic legitimacy. The special case of the EU as an intergovernmental and supranational polity means it is neither appropriate nor desirable to seek to make statistical generalisations from the findings of this study. The cases explored in this research consist of examples used to illustrate theoretical and hypothetical principles (Guthrie 2010, p.66). They illuminate some of the issues that may well affect the larger population of ECI cases but as is the norm with case study research its major weakness lies in the inability to make significant generalisations about its findings (Pierce 2008, p.53). Considering multiple cases can however facilitate a more robust exploration of the feasibility of some of the theoretical and ‘in principle’ claims made (Burnham et al. 2008, p.65), therefore this research considers four cases of ECI campaigns, which I set out below. Despite the obvious limitations to generalisability, a case study approach remains a highly fitting means to address the research questions I have identified.

In an ideal case study research design, empirical data would be collected from a variety of sources. The opportunity to use many sources of evidence is a benefit of the case study design and allows for the triangulation of data, leading to greater confidence in the findings of the research (Yin 2009, p.114). Under ideal conditions, the approach to my research questions

would include data from: documentary analysis, including legal documents, official and unofficial reports of events and proceedings, media reports, press releases, etc.; direct and participant observation of key events and proceedings, and interviews with a multitude of actors involved in the ECI, from campaigners to EU officials, Commissioners, MEPs, bureaucrats, members of citizens' committees, etc. A combination of these three methods would facilitate an investigation of the research questions in sufficient depth as to provide findings that are generalisable beyond the specific cases, valid and reliable. Each method has benefits that can be maximised and limitations that can be minimised by combining them to address these research questions.

Documentary analysis is the central method used in this research. Factual information and written perspectives on events, both readily available in documentary form, are vital to the successful conduct of a case study, and as Burnham et al. point out, official documents "form the essential outer framework for political research" (2008, p.194). There are however strengths and weaknesses of documentary analysis, and documents should be assessed for quality using four criteria as identified by Scott: authenticity, credibility, representativeness and meaning (1990, p.6). The strengths of the types of official documents considered in this research are within the criteria of authenticity, or the genuine nature and authority of the documents, and meaning, or of their clarity. However, with the meaning test it is necessary to be aware of potential problems of interpretation, including contextual considerations and an evaluation of the significance of the particular document (Scott 1990, p.31; Burnham et al. 2008, p.211). Larger challenges arise with the quality criteria of credibility and representativeness. Credibility raises the question of potential biases in the documents and care must be taken to consider the possible intentions of the author and, again, the context within which the document was created (Bryman 2016, p.552). Representativeness of the documents must also be considered carefully. Consulting a broad range of documents from different perspectives, including over time and space, can help to ensure that a full picture is

presented and the documents used are as representative of reality as possible (Bryman 2016, p.561). An assumption that all information found in documents is the truth can affect the reliability of the research findings, though documents can be used to corroborate each other to ensure the veracity of factual information and accurate reporting of events. Furthermore, there may be issues of accessibility to important documents that may not be in the public domain.

In practice, documentary analysis was relatively easy to conduct for this research project. Many relevant documents related to the ECI and my research questions are widely available online and were easy to locate with a straightforward data collection strategy of searching for relevant pieces of evidence using key words, following up the recommendations of ECI stakeholders, and snowballing. Official documents of the EU, including press releases, speeches, reports and legal documents can be accessed through the institutions' websites and all are available in all the official languages of the EU. The documents and websites of the ECI campaigns, however, are not guaranteed to be available in an accessible language and so would have required translation to be used in this project.¹⁸ I was therefore unable to access the websites of and documents relating to some ECI campaigns that were provided in a language other than English, such as 'Pour une gestion responsable des déchets, contre les incinérateurs'. Similarly, English-language media was relied upon for analysis of media reports on the ECI, which necessarily limited the scope of the research as I was unable to access several news sources in other EU countries that did not provide English translations, and the analysis of most documents was limited to those available online, for practical reasons (though I did not identify any document desirable to the research that I could not access online). Whilst documentary analysis provides the bulk of the empirical data used to reach the conclusions of this study these limitations to its conduct should be borne in mind.

¹⁸ At the ECI Day 2015 the EESC announced a tool for the translation of all information and documents provided by ECI campaigns into any or all official languages of the EU (European Economic and Social Committee 2015).

In depth interviews can provide insightful contributions to case study research, as interviewees are able to provide factual information, which can corroborate information from other sources, as well as their perceptions and opinions on events. The insights of the individuals closely involved with the ECI, including representatives of the EU's institutions, campaigners, and members of ECI citizens' committees, are invaluable to an evaluation of its effects on democratic legitimacy due to the unique perspectives they can provide. As with other methods interviews are, however, not without limitation. The factual information provided can only be relied upon as accurate where it corroborates information from an alternative source, as interviewees' responses may be limited by bias, poor memory and recall, or poor articulation. In addition, access restrictions mean it is not always possible to secure interviews with individuals whose inputs would be most highly valuable to the research. Due to the practical limitations of conducting in depth interviews, the data they provided me with is used primarily to verify the information found through my documentary analysis and as a key source for the opinions and perspectives of those closely involved in the process.

The hurdle of access to interviewees arose in this project particularly among key representatives of EU institutions involved in the ECI. My intended interview plan included around twenty individuals, just over half of which included representatives from the European Commission Directorate General for Inter-institutional Relations and Administrative Affairs and the Institutional Affairs Unit of the Commission's Secretariat General, MEPs who had been key figures in campaigning for the ECI during the Convention on the Future of Europe, in finalising the ECI Regulation and in the public hearings on the successful ECIs, and figures involved in the implementation and monitoring of the ECI from the European Economic and Social Committee. However, I was unsuccessful in obtaining access to many of these potential interviewees. This was due to various reasons including lack of availability, unwillingness to participate, last minute cancellations and failure to attend scheduled interviews. In some instances, I was redirected by a prospective interviewee to their assistant who was either able to speak on their

behalf or had insights from an alternative perspective (for example, I was able to interview Olivia de Lasteyrie, the parliamentary assistant of Alain Lamassoure MEP, who had been co-Rapporteur for the ECI Regulation). This proved useful, though was not necessarily an adequate substitution for interviewing the individual first approached.

A restriction on interviews also arose due to location. This limitation mostly affected my intended interviewees from civil society organisations and ECI campaigns, who made up almost half of my twenty planned interviews. Most of the participants I was able to interview were available to meet in Brussels, or, where that was not possible, through Skype. There were other cases however where this was not possible and I was unable to interview some individuals who would have been useful for my research, such as representatives of the One of Us ECI, of organisations such as the Initiative and Referendum Institute Europe, which had been involved in campaigning for the successful implementation of the ECI, and the European Citizens' Action Service.

I was able to conduct seven in depth interviews, as well as hold numerous other informal written and spoken conversations with key informants, throughout the course of this research. I collected written consent from all interviewees for the information they provided to be used in the research, their consent being based on full information about the purpose of the project. A full list of interviews undertaken can be found in Appendix 2. The information sheet and consent form provided to the interviewees can be found in Appendix 3. Two of the interviewees requested anonymity in the representation of their responses (Member of ECI Task Force 1, Member of ECI Task Force 2).

Third, observing events and discussions relevant to the ECI can bring interesting information to the research that would not otherwise be available. Observing both formal proceedings and informal discussions and events provides valuable contextual information that is likely to be missing from documents related to the events and discussions. In an ideal situation, events

throughout the development of the ECI, from the Constitutional Convention through to its launch, would be closely observed, as well as discussions and meetings of citizens' committees, and all proceedings within the EU institutions related to the ECI. This would provide me with a holistic, contextual overview of the deliberations on the ECI in terms of its intended and expected potential to impact upon the EU's democratic legitimacy. Whilst reports and documents arising from events are useful, they cannot provide additional insights into the interpersonal behaviour and motivations of those involved that can be identified with direct observation. Furthermore, documents relating to events can only present them in the past tense and not in real time, so may not include subtleties that would become apparent through real time observation.

In the course of this research, observations were carried out where possible, yet not to the extent that would have been preferred in an ideal situation. The timeframe of the research meant that those early proceedings related to the design of the ECI had already taken place before the research began, so were impossible to observe (though I was able to access relevant documents relating to the proceedings). I was, however, able to observe and participate in several formal events related to the ECI during the research, including conferences and workshops of The ECI Campaign and the annual ECI Day events organised by the European Economic and Social Committee (EESC). Hearings of the European Parliament related to the ECI and some additional relevant meetings and conferences have been available to observe online through live streams where limitations in terms of location and travel have prevented me from attending to observe in person. Again, as with the interview data, the information gathered through observations, due to its limited nature, fulfils only a supplementary role in this research project, and documentary analysis remains the core source of empirical data on which the findings are based.

In addition to the limitations of the research findings in terms of the methods used to collect empirical data, further features of this project could provide restrictions on the claims made. There are necessarily two elements to the research: an evaluation of the ECI's potential impact on democratic legitimacy in principle, in terms of its design and objectives, and an examination of its practical functioning thus far. Due to the early days of the ECI it is necessary to approach the conclusions of the practical experience element of the research as related only to the *potential* impact of the ECI on the democratic legitimacy of the EU, as it is too early and there are too few cases to make definitive conclusions about the long-term impact of this mechanism. The time limitations of the research restrict the range of cases available to be considered to those ECI campaigns that were registered with the European Commission before 31 December 2012 (from the ECI's official launch date of 1 May 2012), as only these cases completed all formal stages of the ECI process within the research period. Insights are therefore drawn from the ten successfully registered ECIs that completed the entire ECI process before 31 December 2014, and it is acknowledged that these first ten campaigns may not prove representative of all subsequent ECI campaigns registered.

The principal reason for the focus on this time period is pragmatic: in order to make any assertions about how the ECI is functioning in practice it is necessary to evaluate the entirety of the process. Only those campaigns registered before the end of 2012 could be reasonably expected to complete the full ECI process (as described in chapter two), from formation of the citizens' committee to response from the Commission, by the end of 2014. The first ten ECIs are also, usefully, varied, in terms of the topic of the campaign, the nature of the organising committee and the campaign strategies used, and had varied levels of success as can be seen in table 4.2. Because of this some interesting comparisons can be drawn between the campaigns, which will be of significant importance when answering the core research questions. In addition to these ten core ECI examples, the research also draws on instances of

proposed ECIs that were not successfully registered, including interesting phenomena such as the 'self-organised ECI' Stop TTIP.¹⁹

It is evident therefore that studying the ECI in its early and formative years presents challenges and limitations to my research, including the limited number of campaigns from which to draw empirical evidence and the limited nature of the information available. However, the methodological literature does not readily address the question of when precisely *is* a good time to begin researching new phenomena. We are told how institutions can be evaluated from a theoretical perspective, for example using Smith's (2009) criteria for evaluating democratic innovations, but not when it is appropriate to do so. It is commonly noted that topics of research should not be so new so that there is no existing literature of any relevance on which to draw when explaining the significance of the topic, and that there should be sufficient information available so as to address them adequately (they should be 'researchable') (Bryman 2016, p.83). It is also suggested that research on fashionable or faddy topics is unwise (Alvesson & Sandberg 2013, p.20), as is a project with the "chief rationale" of being the first study of a particular phenomenon (Dunleavy 2003, p.21). Beyond this, however, the question remains how long one should wait before beginning to evaluate a new phenomenon in order to have available sufficient empirical evidence to make concrete and potentially generalisable statements about its impact.

Nonetheless, there exist benefits to conducting research at this stage in the life of the ECI, despite its mostly in principle nature and reliance on primarily anecdotal empirical evidence. For a start, it is vital that academic research is socially relevant: that it addresses an issue that is important in the real world and that citizens and policy makers care about (King et al. 1994, p.15). The more people who are potentially affected by a topic and the more it is topical, the greater the value of the research (Lenhert et al. 2007, p.30). Studying the ECI in its early stages

¹⁹ See Appendix 1 for details of all ECIs registered and refused registration from 01/05/2012 to 31/12/2015.

therefore contributes to the social relevance of the research project, particularly as the EU's own review of the ECI is currently underway: it is obviously something that EU policy makers, as well as other stakeholders and interested parties, care about. Because of this there is value merely in the 'in principle' aspects of my research findings. In addition, as Lenhert, Miller and Wonka state, "if things are going badly, knowing this is better than not knowing it" (2007, p.31), and as such there is usefulness in evaluating the impact of the ECI on the democratic legitimacy of the EU even in its formative years and with limited empirical evidence available. The EU institutions made the decision that three years was an appropriate time period to evaluate and review the functioning of the ECI because it was a "jump into the unknown" and many aspects related to its functioning would only become clear once in force (de Lasteyrie, interview); it makes sense that academic investigation might also fit this timescale.

Furthermore, most institutions will have a limited lifespan, and during their lives they change, whether accidentally, through a process of evolution so that they become better suited to their context, or intentionally (Goodin 1996, p.24). It is thus surely beneficial to study institutions at all stages of their life, to recognise this evolutionary journey; a study such as this that preliminarily evaluates the potential impact of the ECI should be valuable at least to those who may study it in its future. This, combined with the illustrative and suggestive nature of the cases of ECI campaigns I consider, provides potential for the proposal of further research to be conducted. I set out some suggested future research in chapter eight. Nonetheless, whilst there is virtue to studying an institution such as the ECI in its formative stages, it remains the case that the limitations in terms of available empirical evidence do have some implications for the strength of the 'in practice' claims I can make, and the cases I rely on to make my claims may not be investigable in as much depth as Yin's (2009) case study model advocates.

| Date of Registration | Registration Number | Name | Signatures Collected |
|------------------------|--------------------------------------|---|----------------------|
| 09/05/12 | ECI(2012)000001 | Fraternité 2020 – Mobility.Progress.Europe. | 70,412 |
| 10/05/12 | ECI(2012)000003 | Water and sanitation are a human right! Water is a public good, not a commodity! | 1,884,790 |
| 11/05/12 | ECI(2012)000005 | One of us | 1,897,588 |
| 22/06/12 | ECI(2012)000007 | Stop Vivisection | 1,326,807 |
| 16/07/12 | ECI(2012)000008 | High Quality European Education for All | Unknown |
| 16/07/12 | ECI(2012)000009 | Pour une gestion responsable des déchets, contre les incinérateurs | 754 |
| 08/08/12 | ECI(2012)000010 | Suspension of the EU Climate and Energy Package | Unknown |
| 27/08/12 | ECI(2012)000011 | Central public online collection platform for the European Citizen Initiative | Unknown |
| 13/11/12 | ECI(2012)000014 | 30km/h – Making the streets liveable! | 44,291 |
| [10/05/12] 03/12/12 | [ECI(2012)000002] ECI(2012)000016 | Single Communication Tariff Act | 145,000 |

Table 4.2: The ten ECI campaigns successfully registered, and not withdrawn, by 31/12/2012²⁰

Research cases

For practical reasons, it is not possible to conduct full case studies of all ten ECIs that completed their campaigns during the specified timeframe (the population of cases). Therefore, four cases of particular initiative campaigns provide the core of my empirical research findings, though I also draw insights from the other six campaigns where these are helpful. The four in depth cases are the first four initiatives registered by the Commission since the ECI's launch in 2012 and that completed the signature collection phase. They were chosen for the purposes of this research for that reason, due to the practical constraints of the project

²⁰ See Appendix 1 for additional details on these campaigns plus those registered later, withdrawn and refused registration by the Commission.

and the time limitations involved. This method of convenience sampling reinforces the limitations to generalising from the cases to the whole population of ECI campaigns, as discussed above (Mabry 2008, p.223). It should be recalled that the cases are considered illustrative cases for the purpose of demonstrating some of the ‘in principle’ conclusions I draw. Nonetheless, the differences and similarities between the four cases provide for useful comparison and consequently strengthen the conclusions. Two of the four cases, Right2Water and One of Us, were successful in terms of signatures collected, and two were unsuccessful. Two, Fraternité 2020 and One Single Tariff, were organised by informal groups of volunteers, the other two had more professional organisations facilitating and funding them. Right to Water and One Single Tariff can be seen to have had tangible impacts on EU policy, in contrast to the other two. These similarities and differences between the four cases investigated allows for some, albeit limited, theoretical generalisations to be drawn from their experiences to those of ECI campaigns more broadly, though they should not be considered a representative sample of the population of ECI campaigns. Here I provide brief overviews of the four selected cases, which are necessarily embellished in the subsequent analysis.

[Fraternité 2020 – Mobility.Progress.Europe.](#)

Fraternité 2020 was the first ECI to be registered with the Commission, on 9 May 2012. The objective of the initiative was to boost EU exchange programmes such as the European Voluntary Service or Erasmus, an EU student exchange programme which aims to enhance skills and employability, as well as cultural and linguistic exchanges, amongst students in the EU. It asked three things of the Commission: a commitment to increasing funding for exchange programmes until it reaches 10 percent of the EU budget; increased provision for participants of the programmes to undertake courses to learn more about their host country, and increased monitoring of mobility throughout the EU to check for progress (European Commission 2014e).

Fraternité 2020 had a deadline for signature collection of 1 November 2013²¹, and managed to collect a total of 70,412 online signatures in this time; no paper signatures were collected. The initiative received total funding of €7,000 from four different organisations. Its citizens' committee was comprised of an informal group of young people who had participated in the Young European Citizens' Convention in Cluny, France, in 2010, and disbanded following the completion of the signature collection period. Fraternité 2020 was unsuccessful at meeting the 1 million signatures threshold and was not pursued further.

Single Communication Tariff Act (One Single Tariff)

The second initiative registered by the Commission was One Single Tariff, which was launched the day after Fraternité 2020, on 10 May 2012, along with two other initiatives (Right2Water – see below – and EU Directive on Dairy Cow Welfare²²). One Single Tariff called for the Commission to propose an end to roaming fees within Europe and to introduce a flat-rate communication tariff for all of the European Union (European Commission 2015h). Six months after registration, however, the initiative was withdrawn by the citizens' committee, which was comprised of an informal group of friends. It was re-launched on 3 December 2012 with a signature collection deadline of one year later (3 December 2013) in order to have additional time to collect signatures. During its year of signature collection, the One Single Tariff initiative collected 145,000 signatures online, and it had total funding of €2,000 (European Commission 2015h). Whilst no further action on the issue was taken as a direct consequence of the ECI given its failure to meet the required signature threshold, its core objective had already been met prior to its re-launch. During the signature collection procedure, the EU committed to

²¹ Due to initial problems with the online signature collection system, the first eight registered ECIs were granted extensions to their signature collection period and were given the new deadline of 1 November 2013.

²² The ECI 'EU Directive on Dairy Cow Welfare' was withdrawn on 20 July 2012 despite amassing almost €350,000 in funding (from the World Society for the Protection of Animals, Compassion in World Farming and Ben and Jerry's) and collecting 293,511 signatures in just two months (Supporting Better Dairy 2012).

abolishing roaming fees in a 2012 Regulation, which is due to take effect from 2017 (European Union 2012).

[‘Water and sanitation are a human right! Water is a public good, not a commodity!’ \(Right2Water\)](#) Right2Water was the third ECI registered by the Commission. It invited the Commission to implement the right to clean water and sanitation as a human right and a public service. This campaign had three key objectives: to oblige member states to ensure the right to water and sanitation; to ensure water services are excluded from liberalisation, and to increase the EU’s efforts to provide universal access to water and sanitation (European Commission 2014h). Right2Water was launched on 10 May 2012 and had a deadline for the collection of signatures of 1 November 2013. The initiative campaign was organised by the European Public Services Union (EPSU), a confederation of trade unions throughout Europe and the citizens’ committee was comprised of representatives of water unions from the EU member states (WATER is a Human Right 2013d). During the signature collection period, Right2Water collected a reported 1,884,790 signatures both online and on paper: exceeding the 1 million threshold by a significant margin. It submitted these signatures for verification almost two months before the collection deadline, in September 2013 (WATER is a Human Right 2013c). Following the verification of 1.6 million signatures the successful initiative was submitted to the European Commission and the public hearing on Right2Water in the European Parliament took place on 17 February 2014 (WATER is a Human Right 2014e; European Commission 2015g, p.10). The European Commission responded to the Right2Water initiative on 19 March 2014, stating that it “is committed to take concrete steps and work on a number of new actions in areas that are of direct relevance to the initiative and its goals” (European Commission 2014b, p.13). Whilst it lists seven areas of intended action, including reinforcing implementation of existing legislation, launching a public consultation, and cooperating with existing initiatives, none of these amount to the outcomes desired by the campaign.²³ To date no new legislation on this

²³ For more information on the Commission’s response see European Commission (2014b).

issue has been introduced by the Commission, though the European Parliament voted in September 2015 to pursue the right to water and sanitation through its own initiative, asking the Commission to propose relevant legislation in response to the ECI²⁴ (European Parliament 2015c). As will be discussed at length in later chapters, there have however also been some interesting unanticipated consequences and impacts of the Right2Water ECI.

One of Us

The ECI One of Us was the fifth initiative to be registered by the Commission on 11 May 2012, the day following One Single Tariff, Right2Water and the EU Directive on Dairy Cow Welfare. As with Fraternité 2020 and Right2Water, One of Us had an extended signature collection period to end on 1 November 2013. The main objective of this initiative was to invite the Commission to protect the dignity, integrity and the right to life of every human being from conception onwards (European Commission 2014f). Whilst it is beyond the competence of the Commission to propose any legislation on the legality of abortion practices, the One of Us campaign specifically asked the Commission to end the financing of activities in the areas of research, development aid and public health which presuppose the destruction of human embryos. The citizens' committee behind One of Us emerged from an Italian national Christian movement and the campaign was predominantly pursued within the Catholic Church. Amassing €159,219 in funding, from one Italian and two Spanish pro-life organisations, the initiative collected 1,901,947 signatures ahead of the collection deadline, 1,721,626 of which were validated by the national authorities and submitted to the Commission in February 2014 (European Commission 2014c). The public hearing on the One of Us initiative took place in the European Parliament on 10 April 2014 and the Commission responded to the initiative on 28 May 2014 (European Commission 2014a; European Commission 2015g, p.10). The Commission's response indicated no intention of proposing new legislation as a consequence of the ECI or pursuing the issue any further.

²⁴ The significance of this in terms of impact is raised in chapter six.

Conclusion

The analytic criteria that emerge from the theoretical discussion of democratic legitimacy are applicable to the case of the EU because they derive directly from the theory and are not based on any existing incarnations of the theory that are not appropriate for the unique EU case, as highlighted previously. The criteria of inclusion, impact and issues can be applied to any instrument in any political system for an assessment of their contribution to the system's democratic legitimacy. Applying the three criteria to the case of the ECI and the EU enables the identification of sub-research questions that need to be addressed in order to reach a conclusion on the ECI's impact on the democratic legitimacy of the EU, and I have argued why a case study research approach is the most appropriate means of addressing these questions. Collecting data using three methods, documentary analysis, interviews, and observation, should render the conclusions of the research reliable and valid and facilitate some analytic generalisations in terms of broadening theoretical discussion. However, the research undertaken in this project is not without limitations, not least in terms of restrictions of access to individuals and events which mean that in practice the majority of the empirical data collected comes from documentary analysis, and the other two methods provide only supplementary information. As with all case study research, in addition, caution must be taken with attempts to generalise from the chosen cases to the full population. Further limitations arising from language barriers, geography and the timeframe of the research have been noted. On the issue of the timeframe, however, I have highlighted several advantages to investigating the ECI even at this early stage in its life and identified why even the potential or in principle conclusions that I am required to draw are of value in particular to ECI stakeholders and future researchers. Finally, the selection of four specific ECI campaigns to serve as the central cases in the research has been justified and the cases described. In the following chapters, the cases are used to answer the research sub-questions as set out in this chapter.

Chapter 5: Inclusion

One of the most prevalent concerns voiced about the ECI in its early days was that this was a tool whose design did not facilitate the extensive participation of European citizens. Instead, it was argued that the ECI would be used and abused by CSOs, NGOs, Trade Unions and even political parties, a concern shared by citizens in a Eurobarometer survey (Anglmayer 2015; Thomson 2014; European Commission 2014d). Media sources considered MEPs likely to use the ECI in order to pursue legislation they would not be able to under their ordinary powers in the European Parliament, with one commentator stating “the ECIs could yet turn into the European Politicians’ Initiatives” (Brand 2012b). Whilst the former Commission Vice President responsible for the ECI has called these early concerns “completely unfounded” (Šefčovič 2014, p.8), others, including several organisers of ECIs, consider that the ECI is “another tool for big organisations to advance their agendas” (Merz 2014, p.40), “not an appropriate tool for ordinary citizens” (Gorey 2014, p.55), and “impossible for a ‘pure’ citizens’ group” (Kendler 2014, p.59). The question of whether or not the ECI is something that facilitates the wider participation, or inclusion, of European citizens is therefore one that continues to be contested and, as already highlighted, is of fundamental significance to how the ECI can impact upon the EU’s democratic legitimacy.

In relation to the first, and primary, of the three analytic criteria I have identified, I argue that there is reason for both doubt *and* optimism. Whilst the ECI is still in its formative years and conclusions are therefore necessarily tentative, though as I discussed in chapter three this does not mean insignificant, I find that the ECI has the potential, albeit limited, to impact positively upon the inclusivity of EU policy making in both intended and, more significantly, unintended ways. Through addressing the three research questions associated with inclusion as set out in chapter four, in this chapter I argue that despite the initial scepticism regarding the intentions

of the ECI, it has the potential to have a positive impact on inclusion in perhaps unexpected ways.

The chapter proceeds as follows. The first section explores in greater depth how the criterion of inclusion also implies the existence of a demos, and I propose the application of a model whereby multiple demoi are brought into existence through representation to the three research questions of inclusion: who is entitled to participate, or who is the demos?; are any sections of the demos excluded from participating?, and do the participants have an equal voice in their participation?. The questions are then addressed in relation to the ECI, on paper and in practice, drawing particularly on the experiences of the four core case studies of ECI campaigns. In spite of the several apparent obstacles the ECI faces in facilitating maximum inclusion, through applying and adapting recent developments in democratic theory to the EU, most notably those related to the concepts of demoi and representation, I highlight how the ECI can have significant, positive unintended consequences for inclusion, by acting as a tool which brings demoi of EU citizens into existence. This leads to the conclusion that the ECI has the potential to impact positively upon the inclusivity of EU policy making, particularly through appreciating the ECI as a device that can activate EU citizenship.

Inclusivity, demoi and democratic legitimacy

As previously argued, it is important that each individual in a polity has an equal opportunity to affect political outcomes, in order to meet the requirements for democratic legitimacy of the people as the appropriate source of authority, based on their political equality (Warren 2003, p.224; Beetham 1991). Any institution or democratic innovation must aspire to full and equal inclusion if it is to contribute positively to the democratic legitimacy of the political system in which it is embedded. The answer to the first question, who is entitled to participate, who counts as a citizen, or how is the demos defined, must be established in order to be able to assess the extent to which individuals are included in the process. Second, it should be

established whether any particular elements, sections or factions of the citizenry, or demos, are excluded from participation, as this will easily identify whether the device does or does not have the potential to be fully inclusive. Finally, it must be determined whether all of those who do participate in governing have an equal voice in their participation, or, to put it another way, an equal opportunity to influence outcomes. If the rules of the instrument mean that some participants' contributions carry greater weight than others, even if all have the opportunity to participate, it cannot be said to be equally inclusive (see also R. Goodin & Dryzek, 1980).

It is important to note that equality of opportunity to participate may not be sufficient for ensuring democratic legitimacy if the opportunity is taken up unequally among the people. As Cain et al. highlight, skill, knowledge or resource requirements may implicitly exclude some individuals or groups from participating, even though the opportunity to do so does exist (2003, p.262). The degree of equality manifested in *active* participation is then a further aspect of democratic inclusivity to be considered.

As is evident from the three research questions, the basis of inclusion within and exclusion from a democratic unit is inherently linked with the existence of a demos, or the group(s) of people who collectively constitute the source of democratic legitimacy. However, what precisely constitutes a demos is questioned; there does not exist an agreed upon conception of the demos or list of the features the collective must have to be considered a demos. Some argue that a demos should be defined according to membership, or arguments of either 'blood and soil' (Dahl 1999) or 'affectedness by' or 'subjectedness to' political outputs (Goodin 2007; Näsström 2011). Others focus on the performative or functional aspects of the demos, by which is meant "the functional characteristics it must have in order to perform its role in guiding decisions and enabling actions on the given set of issues" (List & Koenig-Archibugi 2010, p.84). List and Koenig-Archibugi identify two variants of performative definitions of the demos (2010, pp.84–5): either a populist sense, as in the group of people has a general will

(Riker 1982), or the discursive sense, whereby the members have a sufficient network of discourses or communicative interactions (Dryzek 2006). These performative definitions of the demos are, however, unable to provide complete depictions of what it means to constitute a demos, as they lack any consideration of the internal composition and coherence of the demos (which are necessary for the question of inclusion) (List & Koenig-Archibugi 2010).

Blood and soil definitions of the demos have also proven highly troubling for the idea of democratic legitimacy beyond national boundaries or in transnational polities such as the EU. Several arguments have been made as to why the EU does not and cannot have a singular demos,²⁵ based mainly on this idea. The EU has been argued to lack the 'ethno-cultural homogeneity' necessary for collective citizen identification with the EU and hence the formation of an EU demos (Beetham & Lord 1998b, p.36). Ordinary individuals are more inclined to engage with national politics and national frames of reference than with the EU, which is considered by many as too distant and abstract to engage with (Liebert 2012, p.112). A lack of European media, which could assist in the formation and maintenance of a European demos, common language throughout the EU that could be used to communicate across borders, or EU political parties, further reinforce this idea and point to the already mentioned difficulty of claiming input legitimacy for the EU (Grimm 1995; Scharpf 2009, p.187). As Weiler sums up, proponents of the no demos thesis argue that "long-term peaceful relations with thickening economic and social intercourse should not be confused with the bonds of peoplehood and nationality forged by language, history, ethnicity and all the rest" (1995, p.229). This lack of 'peoplehood' suggests that the EU cannot have a demos and therefore cannot be democratically legitimate.

Nonetheless, it is possible to reject the idea that a lack of a shared identity and shared language makes the existence of a demos and therefore democratic legitimacy impossible. In

²⁵ For more detailed discussion of the 'no demos thesis' see Weiler (1995), Beetham and Lord (1998b) and Theiler (2012).

modern times, as Habermas points out, all nations must be based on something alternative to a shared ethno-cultural history as all societies become more multicultural (1995b, p.306). Habermas states that “European identity can in any case mean nothing other than unity in national diversity”, highlighting the possibility of democracy at the EU level based on a slightly broader conception of the demos in which the membership criterion does not stipulate a shared ethnicity or culture (1995b, p.307). Such a conception of a demos, and one that is far more useful in the contemporary transnational context, is (along the lines of a proposition from List and Koenig-Archibugi (2010)) one based on the criterion of democratic agency. By this it is meant that a demos consists of a collection of individuals that has shared beliefs and preferences towards the issues that it, as a group, faces, that it takes action in pursuit of these beliefs and preferences, and that institutions are available to the group for that purpose (List & Koenig-Archibugi 2010, pp.89–90). The last point here is significant: a demos must have space to pursue its interests. As Schimmelfennig summarises, the demos is constituted “by political structures through which the political preferences ... are mobilised, aggregated and represented in the political system” (2010, p.217).

Defining a demos according to the criterion of democratic agency indicates that a lack of shared history and/or language need not be a barrier to the formation of a demos with shared attitudes towards issues faced by all. Indeed, many European countries went through the same painful periods of history in the 20th century and all now face the same challenges, for example in terms of globalisation, that can provide the basis for feelings of commonality and shared beliefs amongst citizens from different countries (Habermas 2001, p.21). There also exist several examples of multi-lingual and multi-ethnic nations that prove that cultural diversity and political unity can co-exist, and in which citizens have multiple, layered identities. These examples provide optimism for the potential formation of an EU demos consisting of citizens of many different nationalities uniting in their attitudes towards the issues that concern them all (Theiler 2012, p.788). It remains the case, however, that Europeans lack feelings of

commonality and consequent identification with an EU demos, with only 23 percent of respondents in the 2014 Standard Eurobarometer 'definitely' considering themselves citizens of the EU (European Commission 2014g, p.27). No matter how possible the existence of a single EU demos is, it is difficult to argue that one exists currently.

The concept of the demos can, however, also be flexible and plural, meaning that it is not necessary to pursue the search for a single EU demos on which to base its democratic legitimacy. Recent theorising on publics and *demos* has highlighted the potential for citizens to belong to several, co-existing *demos*, which collectively provide the basis for democracy. Here my argument builds upon the recent work of Nicolaïdis (2004), Bohman (2010; 2007) and Cheneval and Schimmelfennig (2013). They propose viewing the EU as a 'demoicracy', a new and specific political order, rather than fruitlessly pursuing the application of a nation-state image of democratic legitimacy and a singular demos to a supranational polity (Cheneval & Schimmelfennig 2013, p.340). As Nicolaïdis states, "the European Union has established itself as a new kind of political community, one that rests on the persistent plurality of its component peoples, its *demos*" (2004, p.82). The EU provides the ideal model, it is asserted, for pooling national sovereignty whilst simultaneously creating political institutions that are not a direct replica of those in nation states, which presuppose the existence of a single political community (Bohman 2007, p.133). That is, individual citizens can simultaneously be members of multiple overlapping *demos* (Weale 2007, p.238).

This idea of multiple *demos* is not new: Weiler described a 'concentric circles' approach to *demos*, whereby individuals simultaneously belong to overlapping *demos*, one inside the next, each involving the same feelings of identification albeit at different intensities (1995, p.252). This raises the idea of EU citizenship as a layer of citizenship on top of national citizenship. These overlapping *demos* could also have different sources of identification, that is, membership criteria, with the national one based on organic-cultural feelings of attachment,

and the European one based on shared civic values, such as those described in the Charter of Fundamental Rights (Weiler 1995, p.256; Habermas 2001, p.21). Empirical evidence identified by Beetham and Lord supports the idea of multiple overlapping identities of EU citizens, with the European identity being the weakest (1998b, p.47). They conclude from this evidence that the overlapping identities can be cumulative and mutually reinforcing, leading to the argument that the EU could play the important role of an umbrella infrastructure for all of the many identities and interests of its citizens. Cumulatively, these identities can provide solidarities between citizens that are all the more acceptable because they are reflexive, changeable and negotiable (Beetham & Lord 1998b, pp.45–7). Such a reflexive and adaptable conception of the bonds and solidarities formed between citizens with overlapping interests contributes to the possibility that there need not be a single EU demos on which to base its democratic legitimacy, but the EU could instead be democratically legitimate based on the coming together of 28 national demoi under the EU's democracy umbrella.

I take this argument one step further by suggesting that the EU's democratic legitimacy could be based on multiple emergent demoi in a further, more dynamic, sense: that demoi can not only be overlapping, but also issue-specific and temporary. As Young states, "inclusive political processes should not be thought of as enfolding its participants in a single public with a single discourse of the common good" (2002, p.12), instead there can exist several groups pursuing different issues of common concern to them and the institution still be considered inclusive. Defined using the democratic agency criterion, as a collection of individuals with shared beliefs and preferences and that takes up viable opportunities to act in pursuit of these, demoi, I contend, are not something that exist naturally and need only be discovered but they can be brought into being, constructed or activated. More specifically, by disconnecting the concept of representation from elections and electoral institutions, as recent theorising on representation has sought to do, an important space for non-elective representation is unveiled, which can be highly significant in terms of establishing demoi and activating citizenship within the EU.

Hence, the claims and actions of representatives can facilitate the emergence of the multiple overlapping EU demoi I have argued in favour of, and on which the EU's democratic legitimacy can be based and its effect on inclusion evaluated. It would not be unreasonable to call these demoi instead, for example, 'constituencies', in line with the term's usage by Rehfeld (2005, p.46), or 'publics', in the sense used by Iveson (2007, p.21) or Young (2002, p.12), or several other similar terms. However, the use of the word demoi adds an extra dimension, denoting more of a citizen body that can provide the basis for democratic legitimacy and the identification of the people as the appropriate source of political authority as required by the recognition of political equality, than is implied through alternative labels. When used in terms of the democratic agency definition, the use of the word demoi is, I argue, appropriate here.

The idea of 'representative claims' recently advanced by Saward (2010; 2006), for example, provides a way in which we can envisage an important role for elites in the formation and consequent activation of EU citizenship and demoi. Representative claims offer a new way of looking at representation, which is much more dynamic and flexible than previous theories with its emphasis on the power relationships between individuals rather than static institutions of representation (Saward 2010, p.1). Saward's approach moves towards a focus on what representation does, that is, its constitutive dimension, and the role of representation in non-elected, non-territorial, real-world situations (2010, pp.32–4). For these reasons the application of the idea of representative claims to the question of EU demoi formation and citizenship activation is particularly valuable. In a representative claim, representatives construct their own representation; they call into being the collective that they represent through the claims that they make. The representative claim process works as follows: a maker of representations puts forward a subject, which stands for an object, and is offered to an audience (Saward 2010, p.37). The most important point here is that the representative claims bring constituencies, or demoi, into being. Representation is, as Saward points out, a two way street: "the represented play a role in choosing or accepting representatives, and

representatives 'choose' their constituents in the sense of portraying them or framing them in particular, contestable ways" (2010, p.47). The word 'contestable' is important here also, as audiences must engage with the representative claims in some way, for example by accepting or rejecting them, for the claim to be successful. In this way, then, those claiming to represent a particular belief about a specific issue can bring together those who share the belief about the issue and engage with the claim to representation into a temporary and issue specific demos, acting collectively in pursuit of their interest.

The related idea of nondemocratic representation presented by Rehfeld is also of relevance here. As he points out, nondemocratic, that is, unelected, representation occurs often in international organisations yet traditional theorising on representation tends to focus on democratic representation with appeal to concepts such as authority and accountability (Rehfeld 2006, p.3). Representation is still representation, whether or not a particular representative has been given authority to act or is accountable to those he or she represents. Rehfeld uses the term 'nondemocratic' representation to refer to representation that is detached from elections, but it may be more appropriate to refer to it simply as non-elected representation as unelected representatives can play highly significant roles in democracy: to label them as nondemocratic is, as such, potentially misleading. What is more important than being directly elected, Rehfeld argues, in line with Saward's assertions about representative claims, is that the represented accept an individual as their representative: "Political representation ... results from an audience's judgement that some individual, rather than some other, stands in for a group in order to perform a specific function" (Rehfeld 2006, p.2). In this conception of non-elected representation, the audience uses a set of rules to identify the representative, with the rules specifically setting out an appropriate selection agent, who uses a decision rule, to select the representative from a qualified set. The audience must be that group of people relevant to the specific function of the representative, and they must recognise the decision rules as appropriate to the context (Rehfeld 2006, p.5). As long as the

audience perceives a claim to be representative of that interest as an appropriate decision rule, and therefore accepts the claim maker as a representative of that particular interest, then the representative can purport to represent those throughout the EU with that shared interest. In doing so, the representative can call into being a demos consisting of all of those citizens who share an attitude towards a particular issue and act in pursuit of it, though as with the representative claims model, the engagement and acceptance of the 'represented' with the claim or call is the fundamental constituting element.

It is clear, therefore, that these theories of representation that are explicitly separated from elections and claims to authority and accountability provide a picture of how EU-level actors possessing the requisite resources can activate EU citizenship and facilitate the formation of multiple, issue-specific demoi in the EU. These multiple demoi can in turn facilitate inclusion in EU policy making and as such provide the basis for its democratic legitimacy. In this sense, demoi can be activated by representatives, and not merely discovered. In the remainder of the chapter I apply this model of activating multiple demoi through representation to the ECI, in responding to the three key questions of inclusion highlighted above. The questions are addressed from the perspective of the ECI as the procedure is set out on paper and in practice, drawing on the ECI case studies for evidence.

Who can participate in the ECI?

On paper, all EU citizens are entitled to participate in the ECI; however, as highlighted above, the idea of European citizenship and membership of a single European demos is problematic. Nonetheless, the model of multiple demoi on which the EU can base its legitimacy suggests the possibility that the ECI can act as a channel through which the demoi in the EU can pursue their interests, thereby activating European citizenship and contributing to the overall inclusivity of the ECI, and thereby the democratic legitimacy of the EU.

The Regulation on the ECI states that the Treaty on European Union (TEU) grants the right to participate in the democratic life of the Union, via the ECI, to every citizen of the EU (European Union 2011, p.1). The TEU also re-emphasised the definition of EU citizenship by stating in article 8 under Title II:

“In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.” (European Union 2007)

This declaration illustrates the EU’s recognition of the political equality of all of its citizens. On first glance it therefore appears that the ECI is fully inclusive, as all citizens of EU member states are also by default citizens of the EU (in line with the first sense of multiple overlapping demoi as discussed above) and are therefore afforded the opportunity to participate in the ECI, to influence the EU’s political agenda and consequently policy output. Indeed, Saward points out that the European Commission sees the ECI as a core vehicle through which EU citizenship can be activated and exercised, as he states: “In specific and controlled ways, the ECI is ... a polity-activating device intended to provide a new avenue of active citizenship” (2013, p.228). What is meant by this is that there is an assumption, correct or incorrect,²⁶ on the part of the EU that all of the necessary features of the European polity are in place and simply require enlivening: formal EU citizenship exists on a legal basis, it just needs to be activated and the ECI can, the EU’s institutions believe, contribute to this (Saward 2013).

However, in practice, EU citizenship is not as straightforward in the eyes of the citizens as it may seem. In line with Beetham and Lord’s (1998b) findings alluded to above, many EU citizens are not aware of their status as such, and even fewer of its implications in terms of rights. A

²⁶ Saward critiques the polity-activating depiction of the ECI as he considers it to be potentially limiting to European democracy, and overly ‘scripted’. As he states: “Polity activation strategies are important but limited. Within their scope, progress in European democracy will be focused primarily on advancing a specific conception of *active participation*, and the conceptions of citizenly roles and democratic activity that accompany it.” (Saward 2013, p.229) Saward’s preferred, polity-constituting approach to the ECI is discussed below.

Flash Eurobarometer study from 2013 found that whilst a majority of respondents were familiar with the concept of European citizenship, only 48 percent said they understood what the term meant (European Commission 2013a, p.6). A further Eurobarometer study in 2014 found that 63 percent of respondents felt like European citizens (23 percent 'definitely' felt it, and 40 percent 'to some extent'), yet only 47 percent reported being aware of their rights as European citizens (and only 9 percent 'definitely') (European Commission 2014g, pp.27, 48). If European citizens are not familiar with this status, or aware of the rights it provides them, then it must be asked how they can be expected to exercise their right to participate in the ECI.

This lack of awareness of European citizenship is, as might be expected, reflected in a lack of awareness of the ECI, which many organisers have highlighted as a key obstacle to the success of their ECI campaigns, including *Fraternité 2020* and *One Single Tariff* (Anglmayer, 2015, p. 9; Chauvet, interview; Merz, 2014, p. 40; Pronckute, 2014, p. 34; Rieder, 2014, p. 72; Valera, 2014, p. 62). As Berg and Thomson highlight, "public awareness of the ECI is practically non-existent", and "this creates unfair burdens on ECI campaigns to both educate the public about the ECI instrument and convince them of the merits of their own topic" (2014, p.122). The Flash Eurobarometer survey of 2013 found that 73 percent of respondents were aware that being a citizen of the EU gave them the right to participate in the ECI²⁷ (European Commission 2013a, p.32), though a qualitative Eurobarometer the following year found that only a few participants had heard of the ECI (yet almost half of those from Germany were familiar with it) (European Commission 2014d, p.52), and a further survey undertaken in Germany and the UK in early 2015 found that only 36 percent of respondents from Germany and 31 percent of those from the UK had heard of the ECI²⁸ (Ghergina & Groh 2015). If the citizens are not aware of their right to participate in the ECI, then in practice the impact it is likely to have on the

²⁷ Those aware of the right to participate in the ECI were most likely to be aged between 15 and 24, have completed their education over the age of 20, and be familiar with the concept of EU citizenship (European Commission 2013a, p.39).

²⁸ At the authors' admission this survey was not conducted on a representative sample of the population so may not be generalisable beyond the respondents of the survey (Ghergina & Groh 2015).

inclusivity of EU policy making is limited. Many have put the lack of awareness of the ECI down to a failure of the EU institutions to adequately advertise and promote its existence, and have advocated for increased publicity and communication campaigns to rectify this so that EU citizens are aware of their right to participate (Berg, interview; CIVEX, 2015, p. 7; de Lasteyrie, interview; Kaufmann, 2012a; Schöpflin, 2015a, p. 15). Without recognising themselves as EU citizens and being aware of their right to participate in the ECI as a consequence, in practice the ECI seems unlikely to facilitate greater inclusion in EU policy making and thereby have a positive impact on democratic legitimacy.

Whilst no information is available with regard to who has supported ECI campaigns in the three years to April 2015, the European Commission, in its review of the ECI Regulation, has released some statistics regarding the composition of the citizens' committees of the registered ECIs (European Commission 2015g). A significant proportion of citizens' committee members for registered initiatives were aged between 21 and 30 years, with the frequency of committee members in each age group decreasing as the ages increase (European Commission 2015g, p.5). Organisers of both the *Fraternité 2020* and *One Single Tariff* ECIs emphasised that their campaigns were created by and focused on young people, seeing this as both an advantage in terms of creating transnational citizens' committees and a disadvantage in relation to the universal appeal of the campaign issue²⁹ (Chauvet, interview; Pronckute, interview).

In terms of the nationalities and countries of residence of the citizens' committee members, one EU member state, France, has contributed 40 citizens to the total number of 217 committee members (assuming no individual was a member of more than one committee), whereas 12 member states make up the nationalities of fewer than five of these 217 members of citizens' committees (Bulgaria, Czech Republic, Denmark, Estonia, Ireland, Greece, Hungary, Cyprus, Latvia, Lithuania, Malta, Portugal, Croatia, Slovakia, and Finland), of which three

²⁹ See chapter seven for a more extensive consideration of how the issue of a campaign affects its capacity to facilitate inclusion and impacts.

member states have only had one citizen in a citizens' committee (Ireland, Cyprus and Lithuania), and two have not had any (Hungary and Latvia) (European Commission 2015g, p.5).

Considering the national origins of the signatures collected by Right2Water, One of Us and Fraternité 2020³⁰ can provide a picture of the member states where the ECI is or is not being widely used. Looking at the percentage of each member state signature quota that these campaigns successfully collected³¹ shows that the UK, Sweden and Bulgaria have consistently been within the lowest percentages of signatures successfully collected (Van den Berge 2014, p.24; Del Pino 2014, p.28; Pronckute 2014, p.36), indicating that participation in the ECI thus far has not been equally inclusive across all member states. This is likely to be related to the lack of awareness of its existence, as noted above, or some of the exclusions or deterrents from participating, as discussed below. In practice, therefore, participation in the ECI has not been equal and symmetrical across all EU member states and age groups.

Nonetheless, consistent with the definition of *demoi* offered above, the Regulation on the ECI can be seen as providing an institutional channel through which the EU's multiple *demoi* can act in pursuit of their interests, thereby fulfilling the requirement of democratic agency for the existence of a *demos*. Since the ECI's launch, the EU has a viable opportunity for the increased participation of citizens, and their representatives, to facilitate the activation of EU citizenship and the formation of multiple EU *demoi*. Saward argues that the ECI offers an opportunity to constitute the EU polity and use of the instrument could be conceived of as an 'act of citizenship'. Such acts of citizenship, he argues, "often involve representative claim-making, which in turn can (directly or indirectly, intended or otherwise, sought or ascribed) crystallise into alternative modes of representation" (Saward 2013). In this vein I argue below that, as proposed in the theoretical model above, participation in the ECI can bring *demoi* into being

³⁰ No data was available for the One Single Tariff ECI.

³¹ As described in chapter two, the member state signature collection quota thresholds are currently 750 times the number of MEPs from the country, and are required for that country to be counted amongst the minimum seven member states supporting the ECI.

and activate EU citizenship through the representative claims made in initiative campaigns. The discouraging figures related to familiarity with EU citizenship and the ECI, and the apparently different rates of participation in the ECI between different age groups and nationalities, need not therefore necessarily suggest a wholly pessimistic picture of who can and is participating in the ECI.

The ECI has provided an institutional channel through which the significant number of citizens who share a certain perspective on a certain issue have come together to pursue that common attitude. 1.8 million EU citizens who shared a negative perspective of the privatisation of water services, 1.9 million who wished to protect the status of the embryo, 70,000 who agreed that more money should be spent on EU exchange programmes, and the 145,000 who wanted the EU to end roaming charges, were able to come together to pursue the issue that mattered to them. For the period in which these campaigns were active, it is reasonable to suggest that four temporary, issue-specific, demois, expressing a shared attitude towards an issue, and the means through which to act in pursuit of that issue (the ECI), existed within the EU.

To conclude this question of who is entitled to participate in the ECI, it is clear that on paper the ECI appears to be a highly inclusive participatory instrument as it is open to the participation of all citizens of the EU, though in practice the picture of participation in the ECI does not indicate the potential for full and equal inclusion. I have highlighted, however, the potential of the ECI to contribute to activating EU citizenship by providing an institutional channel through which the multiple, issue-specific demois underpinning the EU's democratic legitimacy can act in pursuit of their interests, thereby contributing positively to the inclusivity of EU policy making.

Are any groups excluded from participating?

As highlighted in the previous section, the TEU and subsequent Regulation on the ECI assert that all citizens of the EU are eligible to participate in the initiative process. Nonetheless,

evidence suggests that some groups of individuals may be implicitly or explicitly excluded from participating in the ECI. This section considers who may be excluded from taking part in the ECI and how this may affect its impact on the inclusivity of EU policy making.

The first practical exclusion from participation emerges from the application of the Regulation asymmetrically across the EU member states. As different member states have different requirements regarding who can and cannot sign an ECI to have their signature verified by that member state, certain groups of citizens are being denied the right to participate. Citizens of the EU who have taken advantage of the freedom of movement within the Union and hence are not living in their member state of origin have in many cases been disenfranchised due to the complicated application of the Regulation, wherein some member states verify signatures based on nationality and others on residence. It has been claimed that this exclusion potentially affects several million citizens in the EU (Anglmayer 2015, p.3). For example, Dutch citizens living in Austria are unable to sign an ECI in Austria as they are required to provide an Austrian passport or ID card number to sign the ECI, yet they cannot sign in the Netherlands because the Dutch authorities require signatories to be resident in the Netherlands (Kaufmann & Berg 2013, p.20). As Tenreiro summarises, “as some member states ask for some data and others for different data, some citizens fall through the cracks” (2014, p.88).

There also exist instances where EU citizens of some member states residing outside of the EU are able to sign ECIs, and citizens of other member states are not (European Commission 2012a). The different requirements of residence and citizenship used by different member states has served to strip many expatriate EU citizens of their legal right to participate in the ECI (Berg & Thomson 2014, p.119). UK citizens, for example, cannot sign the ECI if living outside of the EU, or if living in a member state that requires signatories to be a national of that country with an ID number (and as noted above, UK citizens are amongst the lowest number of signatories for the Right2Water, Fraternité 2020 and One of Us campaigns) (Tenreiro 2014,

p.88). Concerns regarding this disenfranchisement have been raised by the European Parliament, the Council of the EU and the European Ombudsman in their recommendations regarding the review of the Regulation in 2015, calling on the Commission to revise the Regulation to provide for uniform criteria for signatories throughout the EU, though action is yet to be taken to address this (Council of the European Union 2015, p.4; Schöpflin 2015b, p.5; European Ombudsman 2015). Therefore, despite the assertion of the Regulation that the TEU grants the right to participate in the democratic life of the Union, via the ECI, to every citizen of the EU (European Union 2011), the differential application of the Regulation by the member states means that in practice some significant proportions of the EU citizenry are excluded from participating.

The personal data that interested citizens must provide in order to sign an ECI is also, many have argued, deterring individuals from contributing their signatures in some member states. ECI campaigners have noted the unwillingness of potential signatories to part with sensitive personal information as a key barrier to the success of their signature collection (Berg, interview; Pronckute, interview). One interviewee described it as “a repellent for some people” (de Lasteyrie, interview). An investigation by the ECI Campaign found that up to half of the potential signatories to an ECI have been dissuaded by what they see as disproportionately high data requirements, such as providing an ID or social security number when signing (The ECI Campaign 2015, p.5). Fears of having personal data misused or disclosed clearly discourage individuals from supporting ECIs (Lamassoure 2014, p.78; Tenreiro 2014, p.86). As Anglmayer points out, “if one of the objectives of the Regulation was ‘clear, simple, user-friendly and proportionate’ procedures and conditions, to ‘encourage participation by citizens’, this objective cannot be achieved under the current set of rules” (2015, p.18). Different requirements for signing an ECI in different member states could be said therefore not only to exclude but also to deter some citizens from participation. The consistently low participation of Bulgarian citizens in the ECI campaigns Right2Water, Fraternité 2020 and One of Us, as

highlighted above, could be a consequence of the problems with ID requirements reportedly faced by ECI organisers in Bulgaria (Berg & Thomson 2014, p.119).

In addition, there exists an asymmetrical application of citizenship rights throughout the EU as citizenship is not defined uniformly. For example, in Austria individual citizens are granted voting rights at the age of 16, whereas in the majority of EU member states the voting age is 18 (Smith 2012, p.282). This provides further reason to believe that the granting of the right to participate in the ECI to all citizens of the EU is not as inclusive in terms of facilitating political equality in practice as it appears on paper.

Recent research undertaken by Schiller and Setälä (2013b) suggests that exclusions to participation are often implicit within citizens' initiatives. In their comparative analysis of such processes throughout Europe, they find that political parties and other established political organisations are often the actors behind initiatives. They argue that whilst in theory initiative processes provide citizens with equal opportunities to participate in policy making, and facilitate the full inclusion that is necessary for democratic legitimacy, in practice citizens do not have the equal opportunity to use them. This is because "making a popular initiative depends on collective action, and the resources to organise such action are not equally distributed in the society" (Schiller & Setälä 2013b, p.10). Findings from studies conducted in other settings are in agreement that in practice citizens' initiatives and referendums are usually not maximally inclusive democratic mechanisms, as ordinary people simply do not have the skills and resources required for running successful campaigns (Smith 2009, p.117; Lutz 2006; Magleby 1984; Smith 1998).

A consideration of the development of the ECI itself reinforces the claim that it is CSOs and other established groups that are best prepared to engage in such a participatory mechanism. The origins of the ECI, according to De Clerck-Sachsse, presented a paradox: "an initiative allowing for greater civic involvement in EU policy making was achieved due to insider lobbying

rather than because of wide ranging public mobilisation” (2012, pp.300–301). During the Convention on the Future of Europe in 2002 and 2003, CSOs were engaged in the debates with a view to increasing participation in the drafting of the European Constitution. However, the way in which the CSOs involved themselves in the Convention was perceived more as promoting their individual interests through personal connections with decision makers and insider strategies of influence³² than through engaging the wider public in the constitution drafting process. The CSOs’ focus faced inwards, on including particular interests in the draft treaty, rather than outwards in terms of mobilising the wider citizenry, raising important issues related to the future of the EU and assisting in the formation of attitudes towards these issues (De Clerck-Sachsse 2012, p.302). Subsequent ‘citizen’ consultations on the ECI, prior to its launch, were also dominated by CSOs, who, it is questioned, may not be representative of the general population: civil society consultations’ impact on the input aspects of democratic legitimacy is not without controversy (Sternberg 2015, p.10). The ‘Your Voice in Europe’ consultation on the ECI that took place in the EU between November 2009 and January 2010, for example, attracted mainly well-established CSOs as its participants as they, and only they, possessed the high level of specialist knowledge and were able to meet the significant time demands required (Badouard 2013, p.160).

The eventually agreed-upon design of the ECI can also be criticised for favouring the participation of existing CSOs, lobby groups, and others who have the benefit of knowledge of the system, expertise in their area of interest and sufficient resources to pursue successfully a campaign. As a representative from the One Single Tariff ECI stated, “only a few European Citizens’ Initiatives are really initiated by citizens because it’s so complex and so hard to

³² Insider and outsider strategies of influence refer to the position of lobbying groups in relation to the institutions they seek to influence. Insider groups are typically recognised by the institutions they aim to influence and are frequently consulted by decision makers on the issues that they campaign about. Outsider groups on the other hand tend to work outside the formal rules of the game, either because they are yet to develop the skills necessary to be recognised by decision makers or through conscious choice not to participate in government. The distinction was originally coined by Wyn Grant (1978).

achieve that you need money and human resources that only an industry lobby can afford” (Chauvet, interview). The financial and organisational burdens associated with launching an initiative are quite clearly a significant constraint on the participation of ordinary citizens in the ECI process. The financial cost was originally estimated at €1 million per ECI (€1 per signature), which clearly indicates a significant barrier to the involvement of ordinary citizens in the launching of an initiative (García & Del Río Villar 2012, p.318). Conducting an ECI campaign without stable funding has been called a “mission impossible” (Berg & Glogowski 2014, pp.14–5), and a high profile ECI campaign on dairy cow welfare organised in conjunction with Ben and Jerry’s was withdrawn with the organisers citing unreasonable costs of collecting one million signatures throughout the EU as a central reason for their decision not to continue with their campaign (Middelkoop 2012).

A lack of funding has been noted as a barrier to the success of an ECI by several organisers, including those of One Single Tariff and Fraternité 2020, among many others (Chauvet, interview; Kendler, 2014; Pronckute, 2014, p. 34; Pronckute, interview; Rieder, 2014, p. 72; Sharma, 2014, p. 65; Varrica, 2014, p. 30). It does seem to be the case that those ECIs with the highest levels of funding have been the most successful, though no campaign has yet raised the expected €1 million required. Right2Water raised €100,000 before the campaign even launched, and in total over the course of the campaign collected €140,000 (European Commission 2014h). Only eight initiatives thus far have reported funding greater than €10,000, and this includes all three ECIs that have successfully collected over a million signatures (European Commission 2015g, pp.12–3). One of Us reported the highest funding of all ECI campaigns at €159,219, significantly greater than the €2,000 achieved by One Single Tariff and €7,000 of Fraternité 2020 (European Commission 2014e; European Commission 2014f; European Commission 2015h). Their experience with the ECI has led one ECI campaigner to state that “we started to hear that the European Commission had set the ECI system up to fail. There is no way citizens lacking considerable financial resources could undertake an ECI”

(Sharma 2014, p.65). Ordinary citizens without significant financial resources may therefore be implicitly excluded from initiating and running an ECI campaign, or have a reduced chance of successfully collecting the required one million signatures.

Burdens of organisation and coordination also seem to privilege the participation of pre-existing organisations with established communication networks across the EU. One million signatures is not an easily attainable target in a large and diverse polity such as the EU, even though 0.2 percent of the population may initially appear to be a low threshold (García 2013). The EU's very understanding of participation can be considered elitist as it tends to define participation in terms of NGOs and CSOs, rather than emphasising the participation of ordinary citizens (Monaghan 2012, p.294). This draws on the earlier observation of Maignette, who argued that "citizenship in the European Union is likely to remain an elitist practice, limited to those citizens and groups who benefit from their intellectual and financial resources to try to influence EU politics and policies"³³ (2003). The demands of organising and running an ECI campaign are considered excessive for even medium-sized networks by some campaigners (Agthe 2014, p.48; Jourdan 2014, p.45), to the point where they have been given the impression that "policy makers do not want individual citizens interfering in policy making" (Sharma 2014, p.64), and "if an ECI cannot be started by ordinary citizens who are not connected to a strong network or significant financing, then it can only fail" (Gorey 2014, p.56). Due to this, it is suggested that even the Commission itself sees CSOs as the actual target users of the ECI process as they are already mobilised at the EU level. In the early days of the ECI, Commissioner Šefčovič spoke out against this criticism, acknowledging that "lobby groups and organisations will indeed use the ECI to defend and promote their cause" but argued that this is not problematic provided the cause pursued is beneficial to all EU citizens and reassuring that "the vast majority of initiatives will be well and truly led by citizens themselves" (2012b).

³³ This charge of elitism is reminiscent of the argument noted above that only political elites are able to communicate effectively across borders, restricting participation in EU matters from the general population (Kymlicka 1999, p.121).

Nonetheless, Šefčovič has since recognised that having the support of a pre-existing European-wide organisation has “certainly proved to be vital in obtaining the necessary million or more signatures”, somewhat in contradiction to his earlier reassurances (2014, p.8). Members of the ECI Task Force at the Secretariat General of the European Commission also cited the backing of an existing organisation with established networks as a key factor in predicting the success of a campaign (ECI Task Force member 1, interview; ECI Task Force member 2, interview).

Practical experience of the ECI so far is consistent with the concern that the ECI will privilege the participation of pre-existing organisations rather than ordinary citizens, and the extent of organisational backing indeed appears to have affected the likely success of the campaign. Campaigns run by volunteers and without significant organisational backing and EU-wide support networks struggled to publicise their campaigns and collect signatures (Thomson 2014). The Right2Water campaign was organised by representatives of public service trade unions throughout the EU in conjunction with no fewer than nine significant EU-wide organisations, including the European Federation of Public Service Unions (EPSU), which comprises over eight million public service workers from over 275 trade unions, and the European Trade Union Confederation (ETUC), which was already recognised by the EU as a European Social Partner³⁴ (WATER is a Human Right 2013d). ETUC planned the Right2Water campaign based on its advantages in terms of access to networks and resources throughout the EU (Greenwood, 2012, p. 332; Van den Berge, 2014, p. 20; Sanchez, interview). One of the key strengths of the campaign was, according to a representative of its citizens’ committee, that they “didn’t create a network. [They] tapped into something that was existing and could be reinforced” (Sanchez, interview). According to one MEP’s assistant heavily involved with the implementation of the ECI, the European Parliament had no doubt that Right2Water would be

³⁴ European Social Partners represent the interests of European workers within the EU, and are invited to participate in consultations with the European Commission and during negotiations for collective agreements. They can generally be considered ‘insiders’, as in the distinction with ‘outsiders’ noted above, and are an example of the EU’s strengthening of throughput legitimacy as discussed in chapter two.

as successful as it was given the fact it had been organised by the trade unions with representatives in all EU member states (de Lasteyrie, interview).

Whilst the One of Us campaign was not initiated by an EU-wide organisation, it quickly received the backing of the Catholic Church and was promoted by the Pope, with Catholic Bishops throughout Europe helping to coordinate the collection of supporting signatures (Vogel 2014). The Fraternité 2020 and One Single Tariff ECIs were organised, conversely, by citizens' committees composed of friends and acquaintances with concerns relating to the same issues throughout Europe. The organisation of the One Single Tariff ECI involved a series of telephone calls between a group of university friends who happened to be residing in different EU member states at the time (Chauvet, interview). Fraternité 2020, similarly, was organised by a group of young people who had been involved in EU exchange programmes and had met at the Young European Citizens' Convention in Cluny in 2011 (Pronckute, interview). Both campaigns however lacked the backing of influential organisations and networks to assist them with coordinating signature collection and organising publicity, and this lack of organisational support has been considered as a key barrier to their success (Chauvet, interview; Pronckute, interview; de Lasteyrie, interview).

The fact that the Right2Water initiative tapped into an existing network of organisations with representatives in all 28 member states and achieved significant levels of funding along with One of Us, which had the backing of the Catholic Church, supports the idea that there are implicit exclusions on who is able to successfully participate in the ECI, as campaigns without pre-existing networks and lesser resource availability have not proven as successful in the signature collection phase. However, it should be pointed out that there have been few requests for ECI registrations from well-established organisations with significant financial and organisational resources, as might be expected if these are the intended users of this mechanism. Prior to the coming into force of the Regulation on the ECI, Greenpeace decided to

conduct what it considered to be an ECI as set out in the Lisbon Treaty, on the issue of the authorisation of new genetically modified crops without strengthened safety assessments (Greenpeace 2012). Collecting 1,030,308 verified signatures from all EU member states in a seven month timeframe, the organisers were disappointed at the Commission's decision not to consider the petition as an ECI due to the Regulation not yet having been brought into force (Willis 2010; Greenpeace 2012; Unknown 2012a). Reflecting on their experience of attempting to use the ECI, Greenpeace's EU Director Jorgo Riss stated "the citizens' initiative is a good idea in principle, but in reality one million euros will go a lot further to lobby the Commission than one million signatures" (Greenpeace 2012), highlighting the comparative ease with which established organisations with substantial funding can lobby the EU directly rather than through use of the ECI. Greenpeace cited the restrictive nature of the rules in terms of the personal data that must be collected and compared that with the information required of lobbyists, noting that "ECI signatories will be held to a much higher level of scrutiny than any of the thousands of lobbyists who regularly walk the corridors of power in Brussels" (Greenpeace 2012). The registered ECI on Dairy Cow Welfare, organised by Ben & Jerry's, reached a similar conclusion in its decision to withdraw the campaign due to the instrument not being "fit for purpose" (Middelkoop 2012). It is therefore reasonable to conclude that well established organisations with significant funds are not keen to use the ECI due to the existence of simpler and cheaper means for them to pursue their causes in Brussels (Thomson 2014).

The optimism of Šefčovič and other EU officials about the potential for more inclusive participation through the ECI may not be entirely misplaced, therefore. As much of the theoretical work on interest groups and democracy would argue, groups and organisations such as those seen to be privileged in the ECI process can play an important surrogate or representative function, that is, acting on behalf of those who lack the financial and organisational resources, as well as knowledge, within the policy making process (Jordan & Maloney 2007, p.18; Coxall 2001, pp.12, 172). Indeed, from the perspective of pluralism the

involvement of any kind of 'autonomous association' or organised group, including those such as trade unions, religious organisations, businesses, or interest groups, in governing is said to be "necessary to democracy on a large scale" in order to ensure government responsiveness to citizens' demands (Dahl 1989, p.30). In the case of the EU, however, it has been found that CSOs and interest groups functioning at the EU level "are still underpinned by an elitist and functional tradition", as they continue to be used merely to legitimate the decisions of the EU institutions that lack an electoral mandate and to provide them with necessary expertise, rather than to facilitate increased participation and responsive rule (Saurugger 2008, p.1286). It is reasonable to see therefore how the privileged participation of CSOs and other organised groups in the ECI can, at first glance, seem to be at the cost of full inclusion of ordinary citizens.

However, in line with Saward's claims regarding the potential of the ECI to act as a citizenship-activating, polity-constituting mechanism, I argue that it is possible, despite the possible dominance of CSOs in the process, that the ECI will have a positive impact on the inclusivity of EU policy making. Drawing on the theoretical model outlined above, it is reasonable to suggest that the focus of the ECI on the participation of existing groups with significant knowledge, expertise and resources, may not constrain the ECI's potential to activate citizens across EU member states' territorial boundaries. The representative claims made by such groups can bring *demos* into existence. In terms of the ECI the model could work as follows: a CSO or NGO (the maker), could offer certain individuals, perhaps those on the Citizens' Committee (the subject), as appropriate representatives of a particular interest, that advanced in the particular ECI they are pursuing (object), to the wider EU public (the audience). Representative claims are not relevant only to elected political representatives, but, importantly, can be temporary, not confined to territorial boundaries, explicitly partial in that the claims can be made to represent only specific interests, and explicitly or implicitly made.

The idea of non-elected representation can also be used to highlight how the ECI can be considered a vehicle through which demois can be brought into existence. Rehfeld's proposal would work along the lines of: the EU citizens (the audience); accept as valid and appropriate the rules that identify the organisers of ECIs, as in the CSOs or NGOs, as an appropriate selection agent; and that same group as the relevant qualified set; and consider their self-declaration as a representative of a particular interest an appropriate decision rule for selection as a representative. In summary, a CSO may make a claim that through using their existing expertise and knowledge of the EU political system to launch an ECI the relevant Citizens' Committee is in fact representing all citizens of the EU who associate themselves with the particular interest being pursued in the initiative. If the audience of EU citizens accept this claim and engage with it, by signing the ECI or otherwise engaging with the campaign, then those who share the interest pursued in the ECI have the potential to be active citizens and become a demos working to address a shared attitude towards a common issue they face.

This possibility can be illustrated with evidence from the case studies. As a consequence of the Right2Water campaign, many acts of citizenship have taken place at the local level throughout Europe³⁵ that continue to be supported and facilitated by the organisers of the Right2Water ECI. The campaign organisers see themselves as the builder and coordinator of long term strategic alliances between all of those concerned with water privatisation and water rights, conducting a collective effort at the European level to have these issues recognised (Sanchez, interview). As a representative of the Right2Water ECI noted:

"This is not EPSU's European Citizens' Initiative, this is the Right2Water initiative, so if you support the right to water it's your European Citizens' Initiative ... as long as you support these three points it's as much yours as ours." (Sanchez, interview)

As a consequence, the issues raised by the Right2Water campaign continue to be considered within the EU institutions: the European Parliament issued an Own Initiative Report in

³⁵ See chapter six for a more detailed discussion of some of these local level impacts.

September 2015 calling on the Commission to present legislative proposals, and, where appropriate, revisions to the Water Framework Directive to fulfil the objectives of the Right2Water campaign after deeming the Commission's response to the ECI insufficient and lacking ambition (European Parliament 2015b, p.5). The European Parliament even stressed in its report that:

“Support for the Right2Water ECI and its objectives has been further demonstrated by the large numbers of citizens in countries such as Germany, Austria, Belgium, Slovakia, Slovenia, Greece, Finland, Spain, Luxembourg, Italy and Ireland who have spoken out on the issue of water and its ownership and provision.” (European Parliament 2015b)

Therefore, it is possible to see how the representation by the ETUC and EPSU, and the Right2Water citizens' committee, of European citizens concerned about the privatisation of water services, has resulted in the formation and activation of a collective of EU citizens acting (albeit primarily at the local level, yet with European level coordination and consequence), in pursuit of their common interest. Through this representation, the ECI Right2Water has had a positive impact on the inclusivity of EU policy making on the issue of water privatisation.

Similarly, following the negative response of the European Commission to the One of Us ECI, the organisers have created a new European 'federation' of activists committed to pursuing the objectives of their campaign (One of Us 2014d), thereby formalising the collective of EU citizens who wish to act in pursuit of their common concerns that was brought into being through the representation of the citizens' committee. The federation 'One of Us' brings together previously dispersed groups and individuals interested in the protection of human embryos from across the EU who, prior to the representation and coordination of the ECI One of Us, had not been active in pursuing their issue of concern at the EU level (One of Us 2014c). As Thomson summarises, “by creating and strengthening pan-European networks...the ECI has become a powerful tool for enhancing European identity and solidarity” (2014, p.74).

There also exist further, more unintended or unanticipated reasons to believe that the role of CSOs or other lobbying groups in the ECI should not be considered a barrier to increased inclusivity of EU policy making. Deliberation within existing networks of NGOs, for example, can enhance the EU's democracy by facilitating interaction between the purportedly distant EU institutions and the wider public (Bohman 2007, pp.154–5). One of the suggested advantages of the ECI is, as Monaghan also points out, its potential to encourage public debate; even if the Commission is unlikely to act on the initiative there are other benefits to engaging with the process and the related discussions (Monaghan 2012, p.292). The debate between citizens in different EU member states that will potentially be promoted by the ECI, facilitated by the organisations involved in the coordination of the campaigns, could foster the development of common attitudes towards the relevant issues. Commissioner Šefčovič has himself repeatedly referred to this potential in terms of the ECI, stating that, regardless of whether ECIs are successful or the Commission decides to act upon those that are, the ECI “will foster a real cross-border debate about EU issues” (Šefčovič 2012b) and will contribute to the “development of a truly pan-European democratic space” (Šefčovič 2012a). Chapter six considers in greater depth the generation of debate as a consequence of the ECI and highlights several examples where this has taken place.

Additionally, if the profile of the campaigns reaches a certain level, media interest could contribute to the formation of a public opinion related to the issues raised in the initiative, thereby fulfilling the requirement of media interest in EU issues considered a necessity for democracy by Grimm (1995) and Kymlicka (1999). Indeed, the ECI could be exactly the mechanism the EU needs to catalyse the pan-European communication and mobilisation necessary for increased citizen awareness of EU issues and the development of shared attitudes towards them, thereby enhancing individual citizens' identification with a European political community (García & Del Río Villar 2012, p.320). Through EU-oriented organisations reaching out to the wider EU public through their ECI campaigns, awareness of EU politics is

likely to increase among the general public and this can be expected to increase popular participation in the ECI process. The CSOs and NGOs active in the ECI therefore have the potential to act as 'agents', turning social spaces into public spheres and providing the preconditions for effective citizen participation (Bohman 2007, p.32; Liebert 2012, p.116). In practice, however, as identified early on in this chapter, awareness of the ECI amongst EU citizens remains low, and as will be discussed in chapter seven related to the issue of salience, media attention on ECI campaigns has been minimal at best.

These additional positive impacts may therefore not be evident straightaway, and they suggest that the positive impacts of the ECI on inclusion may span a longer timeframe than that of the individual campaigns themselves. Even if the individual uses of the ECI mechanism do not appear to affect positively the inclusivity of EU policy making, wider and more dynamic effects could result, though they may take additional time to be made apparent.

Thus there is significant reason to believe that the emphasis on the participation of NGOs, CSOs and other organised groups rather than ordinary citizens in the ECI process may not be as detrimental to the ECI's effect on inclusion as first thought. By encouraging communication across member state borders and pan-European mobilisation in pursuit of the required one million signatures, ECI campaigns have significant potential to activate EU citizenship, for the formation of European public opinions and common attitudes, public spheres, political communities and *demos*, which in turn have the potential to increase the inclusivity of EU policy making. In response to the question of whether any sections of society are excluded from participating, it is clear that some implicit and explicit exclusions are in place and that the ECI process has the potential to be dominated by CSOs and other pre-existing pan-European organisations, especially in terms of the campaigns that can be successful, rather than being open to the participation of ordinary citizens. However, I have argued that the dominance of organisations in the ECI process does not have to be disadvantageous as, through making

representative claims, such organisations can bring constituencies of EU citizens into being and activate their citizenship, leading to increased participation in the ECI and decreased significance of the implicit exclusions inherent in the ECI process, especially those regarding the financial and organisational burdens involved. As noted above, these broader effects may emerge beyond the timescale of individual ECI campaigns, yet indicate the potential positive impacts of the ECI unanticipated in the Regulation. As argued in chapter four, these tentative conclusions should still be considered significant and valuable.

Do all participants have an equal opportunity to influence outcomes?

In terms of equality of voice³⁶ the ECI fares well. As with direct legislation, participants in the ECI technically have, at the point of signing an initiative, an equal opportunity to influence political outcomes (Smith 2009, p.113). Every individual signature on an initiative that can be validated by the national authorities is counted equally towards the one million signature threshold (European Union 2011). It is true, however, as Smith points out, that any inequalities of participation in terms of the responses to the previous two questions (entitlement to participate and exclusion from participation) will be replicated in the response to this question of equality of voice (2009, p.167) (linked, as already discussed, with the criterion of inclusion being logically prior to that of impact). Nonetheless, as has been suggested, there are reasons to be optimistic about how the ECI can impact inclusivity in relation to the first two questions, so there is little reason to be concerned about how that may impact the response to this final question.

Even so, there are additional questions to be raised that could impact upon equality of voice or influence. Significantly, there is the potential for signatures from large and small states to have different levels of influence due to the minimum signature thresholds being based on the

³⁶ This question refers specifically to the equality of voice afforded to participants in ECI campaigns, and not to the strength of their collective voice in affecting political outcomes, which is dealt with in chapter six.

disproportionate allocation of MEPs by member state population. For example, as of 1 July 2014, 72,000 signatures are required to be collected in Germany in order for it to count amongst one of the seven member states necessary for the Commission to consider the initiative, whereas only 4,500 signatures are required from each of Cyprus, Estonia, Luxembourg and Malta (European Commission 2015c). Therefore, each signature from the smaller states may have a marginally greater impact on meeting the threshold for the initiative to be considered by the Commission than each signature from the larger states.

Some ECI organisers have admitted to strategically targeting certain states in their campaigns, potentially in order to take advantage of this inequality (Chauvet, interview; Kendler, 2014, p. 59), and the Commission has recognised that “campaigning in all EU member states with the same intensity is a particular challenge for ECI organisers” (European Commission 2015g, pp.11–2). In the case of the Right2Water initiative, the potential inequality in weight of signatures did not manifest itself, despite the admission of one member of the citizens’ committee that “to get a million signatures in Germany in a way it’s easier than getting ten thousand signatures in Lithuania because of historic reasons, because no one has even done this in Lithuania” (Sanchez, interview). During the signature collection period the minimum signature thresholds were met in thirteen member states, including both Germany (where 1,382,195 signatures were collected, or 1861 percent of the threshold) and Luxembourg (where 5,698 signatures were collected, or 126 percent of the threshold) (WATER is a Human Right 2013c). Like Right2Water and Germany, One of Us also gathered particularly high numbers of signatures in one country, in this case Italy (where 631,024 signatures were collected, or 1153 percent of the threshold) (Del Pino 2014, p.28). The minimum signature thresholds were met by One of Us in 19 EU member States in total, including three of the four with the highest thresholds (Germany (235 percent of the threshold), France (193 percent) and Italy), and all four of the member states with the lowest thresholds (Cyprus (153 percent),

Estonia (111 percent), Luxembourg (126 percent) and Malta (562 percent)) (Del Pino 2014, p.28).

The Fraternité 2020 initiative achieved its three lowest levels of success on a member state basis in three of the smallest EU member states (Luxembourg (achieving just 2.4 percent of the threshold), Malta (3 percent) and Cyprus (3.5 percent)) (Pronckute 2014, p.36). This campaign at least indicates that no additional success was pursued (or in the least, achieved) in those smaller member states where it might be considered that each signature has a greater influence on the success of the campaign overall. No information on the signatures collected in each member state is available for the One Single Tariff ECI. Therefore, with no practical evidence at this point to suggest that this possible weight difference manifests in disproportionate influence on outcomes, and with the Regulation stipulating the equal value of the signatures, it can be concluded that each signature in support of the initiatives carries an equal opportunity to influence the outcome of the initiative. Every participant in the ECI is therefore granted an equal voice with regard to the weight of influence of their signature.

Conclusion

The potential impact of the ECI on the inclusivity of EU policy making is, therefore, a tentative mix of optimism and doubt. Whilst on paper it seems that the ECI is maximally inclusive, limitations in terms of identification with the EU and awareness of the ECI affect its contribution to inclusion in practice. I have also highlighted why in practice there are implicit exclusions related to the asymmetric application of the Regulation in different member states, along with further reasons to question its potential, due to the lack of a singular EU demos and the privileged participation of CSOs and other groups with significant resources in the process. Nonetheless, by applying a model of multiple demoi constructed through representation to the ECI, it is possible to see how the existence of the ECI may contribute to a more compelling sense of EU citizenship amongst the citizens of the EU member states who can belong to

multiple demois, and in turn this has the potential to increase the ECI's positive impact on inclusion. Furthermore, the dominance of CSOs and other groups in the ECI process has been suggested to have an unanticipated positive influence on inclusion within EU policy making, as the representative claims made by such organisations in the ECI process can bring constituencies of EU citizens into being, activating their citizenship and facilitating greater participation and more inclusive EU policy making in the future, beyond the timeframe of the individual campaigns.

Finally, on the question of equal voice of participants in the ECI process, it is evident that each signature on an initiative has an equal opportunity to impact upon political outcomes in the EU. The experiences of the ECI case studies, along with other campaigns that have taken place, illustrate some of these concerns as well as the reasons I have argued for optimism. Therefore, the ECI, despite initial scepticism, has the potential to positively impact upon the inclusivity of EU policy making in both anticipated and unanticipated ways, and could therefore live up to some of the EU institutions' expectations regarding its effect on the EU's deficit of democratic legitimacy. Just because these conclusions are tentative should not imply that the potentials I have identified are not significant or without value. As discussed in chapter four, the in principle nature of the claims I make contributes to the social relevance and potential impact of the research.

Chapter 6: Impact

In addition to inclusion, there has been considerable scepticism about the extent to which the ECI can be expected to have observable impacts of any kind on the democratic process. In comparison to other means of influencing EU politics, it has been described as “cumbersome and weak” (García & Del Río Villar 2012, p.319); EU civil servants reportedly do not expect it to have any meaningful impact on EU affairs (García 2013, p.259); and the potential for the process to become frustrating if it is without consequence has been noted (Kies & Nanz 2013, p.9). As Berg has stated, “with no hope of action, no one will use the ECI. It will become an empty promise” (2015). This chapter aims to investigate the extent to which these concerns are valid and what impact the ECI can have in theory, and what impact it is having in practice. As impact constitutes the second of the three criteria for evaluating an institution’s contribution to the democratic legitimacy of the system, these questions are fundamental to a consideration of the ECI’s impact on democratic legitimacy in the EU.

The chapter begins with an exploration of the significance of impact for democratic legitimacy, and the distinction between direct and indirect impact is highlighted: direct referring to tangible effects on EU legislative outcomes, whereas indirect relates to feelings of political efficacy and the idea that participation breeds participation, with impacts on other areas. In terms of direct impact, four stages of the democratic decision making process can be identified and the ECI evaluated in terms of its intended and actual effects on each of these four stages: agenda-setting, debate and discussion, decision-making and implementation. I consider what impact the ECI is expected to have, and on which of the four stages, both from the perspective of existing literature and of the EU institutions, and compare this with the reality of the ECI’s impact thus far. Through doing this, it is possible to see that whilst the ECI is perhaps not triggering the direct impact it was designed to, in terms of generating legislative proposals based on successful initiatives, it is having tangible, perhaps unintended, direct impact on the

different stages of the policy making process. The question of indirect impact is equally as important yet somewhat more difficult to evaluate, though a consideration of the effects of ECI campaigns on politics below the supranational level provides an indication of the positive effect of the ECI on democratic legitimacy within the EU more broadly and in unanticipated ways.

The importance of impact

There must be democratic impact from participation in a political system in order for an institution to contribute to the democratic legitimacy of the system, given it facilitates full and equal inclusion. Impact can be defined as “the extent to which citizens are afforded increased influence and control within the decision making process” (Smith 2009, pp.22–3). The word ‘influence’ is significant here, as Pateman notes, there is an important distinction to be made between influence and power, though they are often used interchangeably. The people may be afforded the opportunity to influence outcomes whilst not being granted the power to make the final decisions³⁷ (1970, p.70), therefore there may be important influence and impacts aside from solely in making decisions. However, this definition of impact refers primarily to the direct impacts of a particular device or mechanism (its tangible effects on policy outcomes), and there is a further aspect to impact that should also be considered, that of indirect impacts (civic, educational or ‘spillover’ effects) (Tolbert & Smith 2006, p.25; Kies & Nanz 2013, p.5).

Regarding direct impact, if the appropriate source of political authority in a legitimate democratic political system is the people, then the people must be seen to be in control of and responsible for policy outcomes (Weale 2007, p.103). This principle is often conceptualised as popular control (Dahl 1999, p.20; Friedrich 2013, p.41), or responsiveness to the public will (Parry & Moyser 1994; Saward 1994, p.14; Parkinson 2012, p.159). In terms of participatory democratic devices, the idea of the device having observable impacts on policy outcomes is

³⁷ Pateman refers to this as ‘partial participation’, in contrast to ‘full participation’ wherein participants themselves determine the outcomes of decisions (1970, pp.70–1).

also encapsulated within the concept of 'authentic' participation, which refers to "the degree to which democratic control is substantive rather than symbolic" (Dryzek 1996, p.5). For many such institutions or devices, the suggestion of merely symbolic control is significant as doubts are often aired regarding their potential for direct impact, as Smith states "the deep scepticism expressed by citizens about their capacity to affect the decision-making process is often justified" (2009, p.17).

However, substantive impacts are less important when it comes to the indirect effects of participation. The spillover thesis posits that there can be educative impacts of participation that may not have tangible or observable consequences in terms of policy but that nonetheless can enhance the democratic credentials of the political system: "participation develops and fosters the very qualities necessary for it; the more individuals participate the better able they become to do so" (Pateman 1970, pp.42–3). Therefore, symbolic participation, or as Pateman terms it 'pseudo participation' (making people feel that they are participating irrespective of the direct impact of their participation) (1970, pp.68–9), can also have important consequences for democratic legitimacy. Whilst this view is controversial in some aspects, as I will discuss below, in short, the indirect impact of participating through one means can trigger participation in additional means, which can then have observable effects on political outcomes.

Direct impact

As highlighted above, direct impact need not be confined solely to the making of decisions: there are other elements of policy making on which influence can be evident. The policy making process can, for analytic purposes, be divided into four key stages against which the impact of a participatory democratic instrument can be considered in order to determine its direct impacts. The four stages consist of: agenda setting ("what is the question?"), discussion and debate ("what are the possible answers?"), official decision making ("which answer is

preferred by the people?”), and implementation (“putting the chosen solution into practice”)³⁸ (Catt 1999, p.16). Agenda setting in this context is being used to refer only to setting the political or institutional agenda, that is, the set of issues being discussed within the political institutions (Baumgartner 2001, p.288). The broader public agenda, as in the issues salient to and garnering attention from the public at any given time (Jones & Baumgartner 2004, p.3), is encapsulated within the second stage of the policy process: discussion and debate.³⁹ It is important to gauge the consequences of the mechanism across all aspects of the process, as Parkinson highlights: “one needs to democratise every stage of the collective decision making process – agenda setting, debating and implementing, not just deciding” (2009, p.13).

In terms of the ECI therefore, the realisation of responsive rule is not contingent upon campaigns successfully collecting the one million signatures required for them to be considered by the Commission; they can have positive direct consequences on other stages of the policy making process. It is also important to note however that whilst dividing the process into stages is useful for analytic purposes, there is often overlap between them and the linkages between the stages are as important to consider as the influence afforded in each individual stage. The ECI’s impact across the four stages is summarised in table 6.1, where: ‘the Regulation’ refers to what Regulation 211/2011 states regarding the ECI’s formally anticipated impact; ‘the EU’s expectations’ refers to the vocalised expectations of EU politicians and officials regarding the impact of the ECI, and ‘the reality’ refers to the tangible impacts the ECI can be seen to have had in practice so far.

³⁸ These four stages are distinguished in varying forms by Gastil (2013), Parkinson (2009; 2006), Saward (2003) and Smith (2009). In reality, no decision making procedure perfectly follows these stages or in this particular order, nonetheless they are useful as a tool for analysis.

³⁹ This distinction between institutional agenda and systemic agenda was first drawn by Cobb and Elder (1972).

| | Agenda Setting | Debate | Decision Making | Implementation |
|------------------------------|---|---|---|---|
| The Regulation | Intended impact here, though only an <i>invitation</i> to influence. | None. | None. | None. |
| The EU's expectations | Taken for granted that this is the primary area for influence, yet some disagreement over additional impacts. | Generation of cross-border debate as "the real added value" of the ECI. | Suggestion of influence but unsubstantiated. | Suggestion of influence but unsubstantiated. |
| The reality | Nothing new placed on the EU's legislative agenda as a consequence of a successful ECI. | Debate generated, though primarily at the national and/or local level, rather than transnational. Some online discussion of issues facilitated by social media. | Some influence over the making of policy decisions in some cases. | Limited influence through appeals to Ombudsman and Courts and lobbying. |

Table 6.1: A summary of the ECI's expected and real direct impact across the four stages of policy making.

Agenda setting

Agenda setting, the placing of issues on the EU's legislative agenda, is easily identifiable as the stage of the policy making process in which the ECI has been designed to have the most impact. In terms of the Regulation underpinning the ECI, its capacity to have direct impact is limited to the successful initiatives inviting the European Commission to propose new EU legislation: to place the issue on the EU's legislative agenda. The Regulation states that "[the] procedure affords citizens the possibility of directly approaching the Commission with a request inviting it to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties" (European Union 2011, p.1). It is particularly important to highlight that a successful initiative results merely in the *invitation* to submit a legislative proposal; this is not automatically triggered as in many other citizens' initiatives used elsewhere (see table 3.1).

There is some disagreement about whether this was always the intention of this mechanism. MEPs involved in the formulation of the Regulation were reportedly clear from the start that the ECI was intended as an agenda setting tool and not a policy making one: the latter was apparently never on the cards during the negotiations (de Lasteyrie, interview). MEP Alain Lamassoure has unequivocally stated that:

“When we introduced the ECI instrument into the Constitution for Europe and then into the Lisbon Treaty, it was meant to work as an agenda-setting tool. The aim was to give the citizens the same right of political initiative that the Council and the European Parliament already enjoy.” (2014, p.79)

However, MEP György Schöpflin has stated, when reflecting on the ECI Regulation in 2015, that

“the object of the [ECI] exercise is to change EU law because that was the radical, original dimension that the ECI was supposed to bring about. That there is to be another body - citizens - that can initiate legislation in the European Union.” (The ECI Campaign 2015, p.3)

Despite these conflicting views coming from the European Parliament, as the Commission states in its general Q and A on the ECI:

“The citizens’ initiative is an agenda-setting tool and therefore does not affect the Commission’s right of initiative. It will, however, oblige the whole Commission, as a college, to give serious consideration to the requests made by citizens’ initiatives.” (European Commission 2012a)

Therefore, as the Commission retains the sole right to put items on the EU’s legislative agenda, it seems apparent that successful ECI campaigns are afforded the opportunity simply to influence the Commission in undertaking its right and to bring to its attention issues the people want to see addressed. According to a Commission representative speaking at a conference on the ECI, nonetheless, generating a legislative proposal remains “the ultimate objective” of the ECI (The ECI Campaign 2015, p.4).

This highlights the key difference between the ECI and citizens’ initiatives as the term is more commonly used elsewhere, as discussed in chapter three. In comparison with initiatives in

Liechtenstein and Switzerland, citizen-initiated referendums in Italy and state propositions in the USA⁴⁰, the ECI can be seen to constitute only the first stage, of support gathering, of what is elsewhere a multi-stage process that concludes with a public vote. Whether binding or not, this vote means that the issues of the initiatives, once meeting the support thresholds, are automatically placed on the political agenda of the political system in which they are operating. Without the vote stage of the process, it is not surprising that it might be more difficult to ensure that the issues of the successful ECI campaigns make it onto the EU's agenda, particularly as the Commission retains its agenda setting right.

Notwithstanding this significant difference, a consideration of the impacts of other citizens' initiatives and referendums throughout the policy making process can be useful for anticipating what the likely consequences of the ECI could be. The agenda setting capabilities of citizen initiated referendums have been identified in numerous studies, as politicians take notice of salient issues among the public and bring them to the legislative agenda (Magleby 1984; Kriesi & Trechsel 2008; Dalton, Cain, et al. 2003; Budge 1996; Smith 2009). This provides optimism for the ECI's potential influence on this stage of the process, though as always the systemic context in which the referendums and initiatives are functioning is significant and affects the generalisations that can be drawn: the inclusion of the public vote stage in most other citizen initiated referendums may give these additional agenda setting potential given the distinct possibility of legislative changes as a direct consequence of the referendum. Majoritarian tyranny and the proposal of repressive policies, which, as I have argued, are potentially at odds with the political equality and proper ends of government as rights protection elements of democratic legitimacy, do remain a concern with citizen initiated referendums, as minority ethnic groups have reported feeling lower levels of responsive rule in systems that use referendums and initiatives than in those without (Smith 2009, p.119). Nonetheless, the existence of the opportunity for citizens to place issues of concern on the legislative agenda in

⁴⁰ See table 3.1 and subsequent discussion for further details on these.

itself suggests that citizens' initiatives are granted some influence in terms of agenda setting, and whether or not this opportunity leads to good policy outcomes acceptable to the majority is not of issue here but in chapter seven.

How the Commission responds to successful initiatives is likely to impact whether the ECI is known as an agenda setting mechanism or as something else (for example a protest instrument (García 2012, p.348)). As García states, "a tendency to massively reject ECIs may paradoxically result in this tool being confined to the niche of organisations contesting European integration and left as a protest rather than an effective participation device" (2012, p.349). In line with the observations of chapter five, therefore, the financial and organisational burdens of organising ECI campaigns may mean that its capacity to impact positively popular control in the EU is further limited to enabling niche issues (not those of common concern) to be considered for the legislative agenda (see chapter seven for a further discussion of why this is significant). As also argued in chapter five, however, there remain reasons to be optimistic about the ECI's potential despite the possibility of it being dominated by CSOs or other pre-existing groups, so this concern regarding the ECI being confined to a protest rather than an agenda setting device is not yet reason for pessimism (particularly as, as will be discussed, influencing or encouraging protest can also be argued to enhance democratic legitimacy).

A comparison of citizens' consultations in the EU, however, provides more reasons for doubt about the ECI's potential to impact positively policy outcomes. The Agora in 2008, for example, was designed to have a direct impact on the European Parliament's submission to the EU climate package, yet none of the documents in the submission referred to the Agora (Roger 2013), and a similar lack of impact reportedly resulted from the Ideal-EU project (Talpin & Monnoyer-Smith 2013) and the European Citizens' Consultation 2009 (Kies et al. 2013). In comparing six different participative experiments conducted in the EU between 2008 and 2010, Smith found not one case provided any evidence of being granted popular control over

decision making despite having given the impression to the participants that their recommendations would be integrated into the policy making process (2013, p.211). It may be possible therefore that the ECI is simply the latest in the EU's line of experimentation with participatory democracy that is talked up as facilitating citizen impact on the EU policy agenda but in practice is granted minimal influence or has its outcomes ignored.

A further reason for doubt regarding the potential for the ECI to place issues on the legislative agenda comes as a consequence of the strict rules regarding which campaigns can officially be registered. Approximately 40 percent of all proposed ECIs have been refused registration by the Commission, before they can attempt to impact upon agenda setting or generate any public debate (European Commission 2015f). Many concerns have been raised about the inconsistency and arbitrariness of these decisions to refuse registration, as the reasons given for rejection are often driven by objections to specific legal wording within the proposal rather than any objection to the underlying issue (Thomson 2014; European Ombudsman 2015; European Commission 2014d). As Berg and Thomson comment, "some decisions have been unreasonably restrictive. Others have been inconsistent" (2014, p.121). An investigation undertaken by the European Citizen Action Service (ECAS) found that in a number of cases the legal admissibility test at the point of registration was incorrectly applied by the Commission and their assessment of several ECI proposals as inadmissible was incomplete (ECAS 2014, p.4). This is partially a consequence of the lack of clarification of the definition of 'manifestly outside' the Commission's competences, as stated in the Regulation as cause for rejecting registration, and which has been cited in all of the Commission's refusals so far (ECAS 2014, p.8).

Whilst the Commission has interpreted 'manifestly outside' to mean there is no identifiable Treaty provision that can serve as the legal basis of a legislative act of the nature called for by the ECI (ECAS 2014, p.11), this implies the necessary ability of anyone desiring to propose an

ECI to understand adequately and be in a position to identify an appropriate treaty provision for their initiative, thereby providing a further barrier to instituting the people as agenda setters. One member of the ECI Task Force at the Secretariat General of the European Commission stated that it is difficult for ordinary citizens to understand what is and is not admissible in terms of registering an ECI, and described this as “unfortunate” (ECI Task Force Member 1, interview). It is the case that the Commission is able to offer some non-binding advice to those considering launching an ECI and some information is available on the Commission’s ECI web pages (Anglmayer 2015, pp.13–4; European Commission 2015a), yet this seems insufficient given the numbers of proposed ECIs that have been deemed to fall manifestly outside the Commission’s competences thus far.

The ECAS investigation identified examples of proposed ECIs that they argue should not have been refused registration, either because the subject matter can be seen to be within the scope of the EU’s competence, there exist cases with similar characteristics that were granted registration, or that the Commission did not address all of the Treaty provisions identified by the citizen’s committee as potential legal bases for their ECI. These cases include Right to life-long care: leading a life of dignity and independence is a fundamental right! and Unconditional Basic Income, which was later registered by the Commission following minor amendment by the organisers (ECAS 2014, p.12). In addition, ECAS found examples of ECIs that were registered despite appearing to fall manifestly outside the Commission’s powers according to its own definition, such as the ECIs ‘Termination of the EU/Swiss Agreement on Free Movement of Persons’ and ‘For Responsible Waste Management, Against Incinerators’, for which it was unable to identify any explicit legal basis in the Treaties (ECAS 2014, p.15). Berg has also argued that the rejection of the first ECI to be refused registration, My Voice Against Nuclear Power, was on inadmissible grounds that are “difficult to reconcile with the spirit of the ECI rules” (2012). Kavrakova claims that around one third of the proposals rejected by the Commission should have been registered, and a further third could potentially have been

registered (2015). As of January 2016, six citizens' committees had brought proceedings to the General Court of the EU against the Commission's refusal to register their initiatives⁴¹ (out of 20 refusals in total) (European Commission 2015g, p.4). Until these cases reach a conclusion it is difficult to claim that the Commission's application of the admissibility criteria has been unlawful, nonetheless, the available evidence lends support to the claim that the Commission's registration of ECIs has been somewhat arbitrary and, at best, inconsistent. Clearly these barriers to registration limit the extent to which the ECI can be used to institute popular control, as initiatives are denied the opportunity to influence agenda setting even before attempting to gather signatures and foster debate.

Brand's claim before its launch that "the ECI is, on paper at least, a challenge to the authority of the European Commission, which has always jealously guarded its right of initiative" (2012b) appears to have been heeded by the Commission. It continues to exercise its agenda setting power in deciding which issues brought about by the ECI are actually granted the scope to be placed on the agenda. Agenda setting power, or 'the second face of power', was originally and succinctly described by Bachrach and Baratz when they stated:

"Power is also exercised where A devotes his energies to creating or reinforcing social and political values and institutional practices that limit the scope of the political process to public consideration of only those values which are comparatively innocuous to A. To the extent that A succeeds in doing this, B is prevented, for all practical purposes, from bringing to the fore any issues that might in their resolution be seriously detrimental to A's set of preferences." (1962, p.948)

In this scenario we can imagine the Commission as A and the citizens' committees wishing to register ECI campaigns as B. In refusing the registration of so many initiatives, the Commission retains strict control of the ECI agenda, restricting popular control over the process and denying the ECI some of the impact on the agenda setting stage of the policy making process that the Regulation leads us to expect. Where Dahl describes a situation where the issues that

⁴¹ See below under 'Implementation' for a lengthier discussion of the court proceedings and their implications for direct impact.

the people can place on the agenda are limited by 'rulers', he argues that restraints are placed on the democratic nature of the political system: "For citizens could not democratically decide matters they felt to be important other than those the rulers had allowed to remain on the pitifully shrunken agenda of the neutered democracy" (1989, p.113).

The example of the Stop TTIP proposal that was refused registration by the Commission has been cited as evidence that "ECIs will only be given the go-ahead if they do not disturb the politico-economic fortunes of the Brussels bureaucracy" (Stierle 2014), and the decision not to register the ECI was described as "unfounded and politically motivated" (Stop TTIP 2015a). A representative of the Commission has spoken out against this criticism, stating that "there is no political consideration whatsoever at the registration phase" (The ECI Campaign 2015, p.5). However, whilst the Stop TTIP ECI was refused registration on the basis that if successful it would require a Treaty change to enact, and therefore the Commission considered it outside of its competences, the ECI Let Me Vote, which would also have required a Treaty change if it had been successful and the Commission had decided to act in response, was registered by the Commission (Anglmayer 2015, p.16).

Whether or not the Commission's registration decisions are politically motivated, it remains that where the Commission might be incorrectly or overzealously refusing registration of ECI campaigns they are retaining the agenda setting power in the EU and consequently restricting the potential impact the ECI can have on agenda setting. Mário Tenreiro, previous Head of the Institutional Affairs Unit at the Secretariat General of the European Commission, has lamented the consequences of the Commission's application of the legal admissibility check:

"If we see a citizens' initiative as what it really is – the possibility for citizens to force a European debate on a European question, and to force the European Commission to take a formal position on the issue – then one can question whether the legal filter is not impeding the launching of interesting European debates, on real European questions, with a real possibility of provoking political outcomes, even if the

Commission could only respond by an absence of action due to its lack of powers.” (2014, p.85)

In this vein, Berg reflected that the rate of refusals of registration has “caused so much frustration and loss of civic energy ... it also takes away its potential to increase the legitimacy of the European Union” (Berg, interview). It remains a significant cause for concern amongst ECI activists, as Berg describes:

“The image I have right now a little bit is like we are in this ECI instrument ... like a ship on the ocean and we got some water into it, it is getting flooded, and the more ECIs get rejected the more water is in there and the less practical or less efficient it is to use it in practice the more water is getting into it and the ship is sinking if we don’t work hard to really, if we don’t repair it, this little boat now.” (Berg, interview)

Evidence from the four ECI case studies that provide the basis of the empirical research in this thesis, all of which were registered by the Commission, demonstrates the impact that the ECI can have on agenda setting. It seems that some of the concerns and doubts noted above are evident in practice. The organisers of the Right2Water campaign have been very clear about their understanding of the capacity of their ECI to impact EU policy outcomes and have stressed their awareness that they have the potential only to *influence* the Commission in its agenda setting role (Van den Berge, 2014; Sanchez, interview). One member of the citizens’ committee, Pablo Sanchez, describes his view on the ECI as

“only a petition to the king, so the king then does whatever he wants and then the peasants get angry and they chop the head off the king and they declare the republic. But so as petition to the king goes, the French revolution began with the petition to the king, the petition to pay more taxes and he said no.” (Sanchez, interview)

This therefore demonstrates that whilst the organisers are aware of the limitations of the instrument in terms of agenda setting, they remain optimistic about the potential impact it can have. However, Sanchez did also express his concerns about the extent of the financial resources and time that must be put into a campaign that has only a chance of influencing the agenda setting process, and that has no guarantee of having any impact at all (Sanchez, interview). These concerns were echoed by a representative of the One Single Tariff ECI, who

said “more people would get interested in [it] the day the Commission takes the ECI seriously. Otherwise it’s useless, otherwise people will stop using it. It costs money and time and in the end you get nothing” (Chauvet, interview).

In contrast, the organisers of the One of Us campaign repeatedly spoke out about their expectation that their successful initiative will result in legislative changes in the EU in the form they proposed, suggesting that there is no possible justification for the Commission to refuse to enact the legislative proposals they advocate (One of Us 2014a), and calling a refusal to initiate legislation an “abuse of power” (One of Us 2014b). They state: “A refusal by the Commission would be arbitrary and would ruin the credibility of the citizen initiative mechanism, and it would further weaken the democratic legitimacy of the European institutions” (One of Us 2014a), and “the only honourable choice the ... Commission has is to accept the normal play of institutions and to submit the legislative proposal ‘One of Us’ to democratic debate” (One of Us 2014b). It is therefore evident that the anticipated direct impact of the ECI varies between campaigners, and expectations are not consistent.

Hopes that “a successful ECI with at least one million signatures will have significant normative power – it will be difficult for the Commission to reject it outright” (Smith 2012, p.285) have unfortunately not been evidenced in the ECI campaigns that have been successful so far. In its evaluation of the Regulation three years after it came into force, the Commission declared that it “responds positively to the requests where the Commission has powers to act under the Treaties and where subsidiarity and proportionality principles were respected” (2015g, p.10). This, however, seemingly contrasts with the view of the European Parliament as expressed in its resolution on its Own Initiative Report on the Right2Water ECI:

“The Commission’s actions – which can include, where appropriate, the possibility of introducing suitable elements into legislative revisions or new legislative proposals –

must better reflect the demands of the ECI when these are within its competence, and especially when they express human rights concerns⁴².” (European Parliament 2015b)

Perceptions of the Commission’s responses among ECI organisers have also been far from positive. The One of Us campaign, despite its expectations of significant influence as noted above, elicited no action from the Commission in response, with the responding communication noting that “the Commission does not see a need to propose changes to the Financial Regulation” as requested by the ECI (European Commission 2014a). Organisers responded with anger, calling the Commission’s response “hypocritical”, “disdainful”, “illegitimate”, “anti-democratic”, “unjustifiable” and a “travesty” (One of Us 2014e).

The One of Us campaign is not alone however in eliciting a limited response to their proposals. As yet, no new legislation has been proposed as a direct consequence of any ECI campaign. In response to the Right2Water ECI, the Commission reaffirmed the general message of the campaign and launched a consultation on the Drinking Water Directive (European Commission 2014b), but to the disappointment of the organisers did not propose any new legislation to reinforce this (Van den Berge 2014). This has led the Right2Water team to reflect that they feel the EU has built expectations for the ECI’s impact on agenda-setting much higher than the reality. Sanchez, coordinating the campaign, warned that the EU in general and the Commission more broadly “should not pretend that the ECI is a way of making policy” (Sanchez, interview). Therefore, the ECI thus far has had a minimal impact on placing issues on the EU’s legislative agenda, and the Commission has retained its non-decision making power over the EU’s agenda. Despite this, in the same vein as the One of Us campaign, ECI campaigns continue to expect that the Commission should take action in response to the initiatives that can result in changes to policy (Varrica 2014).

⁴² The significance of the concern with rights for the democratic legitimacy of the EU is discussed in chapter seven.

As noted above, nonetheless, whilst agenda setting may be the stage of the process where the ECI is formally expected to have impact, in terms of the Regulation, its effects on the other stages of the process continue to be important. The European Ombudsman has reminded us that

“in terms of the substantive outcomes of the ECI process, the Commission coming forward with a legislative proposal should not be the only measure of success. While this is what the organisers of an ECI, on the face of it, seek to achieve, the Ombudsman’s view is that the process itself is of major significance.” (2015).

Advice from Sanchez resonates here also:

“The ECI is a tool. It’s a kind of Swiss knife. So you need to decide which part you’re opening and to do what. And it seems to me a lot of people are using the little knife to hit a nail and of course that doesn’t work. If you use the little knife to unscrew something well it might actually work but I mean they’re using it all the time for everything and its absolutely ludicrous to just look at any mobilising or political tool as a kind of carpet bombing thing.” (Sanchez, interview)

The expectations of the ECI campaigns and their understanding of what they can achieve through using the ECI is, therefore, significant in terms of how successful the ECI is considered to be with regard to agenda setting at the EU level.

Discussion and debate

Whilst the process may indeed be significant, as suggested by the Ombudsman, the Regulation on the ECI makes no mention of important impacts beyond agenda setting. There is no identification of generation of public debate as one of the intended consequences of the process. However, former Commission Vice President Maros Šefčovič has highlighted on several occasions the desirability of the potential for the ECI to create pan-European debate, describing the potential for all initiatives, regardless of whether they have any influence on legislative outcomes, to enrich cross-border debate within the EU and stating his belief in this effect constituting the “real added-value” of the ECI (Šefčovič 2012b; Šefčovič 2012a). The Commission’s 2015 review of the Regulation also states: “one of the main benefits of [the ECI] resides in forging links with like-minded people across the continent, facilitating pan-European

debates on issues that are clearly close to citizens' concerns" (European Commission 2015g, p.2). MEP Alain Lamassoure said that "the ECI was also designed to contribute to the Europeanisation of the political debate in Europe, to spread it beyond national borders" (2014, p.79), and the Acting Chair of the Council's ECI Working Group has also stated at a conference on the ECI that "the legislative proposal in itself should not be the aim" as raising the profile of the issues pursued in the ECIs is a better measure of the initiatives' success (The ECI Campaign 2015, p.4). In agreement, Bernd Martenczuk, a representative of the European Commission, considers the ECI to have been a success "if you look at how many citizens participated and ECIs led to a public debate, increased consciousness and awareness at European level of a particular issue" (The ECI Campaign 2015, p.3). A more sceptical view, however, comes from MEP György Schöpflin who responded "if there are only political discussions, you may as well read newspapers" (The ECI Campaign 2015, p.3). The potential and desirability of the ECI's ability to generate discussion and debate across Europe, bringing issues to the broader public agenda, is therefore subject to disagreement amongst the EU institutions, though most perspectives view the ECI's discussion-generating capacity as a positive side effect of its formal agenda setting role.

The hearing held in the European Parliament that is automatically triggered by successful ECI campaigns is clearly an opportunity for debate and discussion around the initiative to take place (Plottka 2014, p.112), and is considered by some in the European Parliament to be a key achievement from the negotiations on the regulation. MEP Alain Lamassoure has called the public hearings "the most visible and important part of the European Parliament's involvement in the ECI since it will enable a public debate to take place" (2014, p.79), and it has been described as "a proper exchange of views on substantial matters ... that was really important" (de Lasteyrie, interview). Still, this opportunity is confined to those initiatives that collect over one million signatures within the specified timeframe. As the organisers of the One of Us ECI sceptically state, "only initiatives whose purposes please the European Commission may be

discussed by the European Parliament and Council” (One of Us 2014b). Because of this, civil society campaigners have called for public hearings to be held on ECIs when they reach 100,000 signatures, in order to raise visibility and encourage the development of public debate on the issues concerned (Von Hatzfeldt 2015).

Furthermore, stakeholders aside from the citizens’ committee have thus far not been invited to participate in the parliamentary hearing, thereby restricting the voices heard in the formal debate that takes place (European Commission 2015g, p.15). Observing the public hearing on the Right2Water ECI, Plottka noted that stakeholders and experts aside from the citizens’ committee were not invited to speak, and whilst this “increased the focus on the ECI Right2Water,” it “did not contribute to the quality of the debate” (2014, p.113). In fact, the suggestion of including known opponents to the ECI One of Us in the parliamentary hearing was met with outrage from two Slovakian MEPs who were in favour of the ECI, referring to it as “an institutional attempt to hijack” and “completely out of step with the purpose” of the hearing (Záborská & Mikolášik 2014). Subsequently the opponents were not allowed to participate. Disallowing those with an alternative perspective on the issue of an ECI from participating in the hearing organised by the European Parliament and restricting access to such hearings to those ECIs that have collected and had verified over 1 million signatures clearly affects the extent to which the ECI can foster formal discussion and debate within the EU’s institutions, which in turn hinders greater public awareness of the issue and continued discussion in the public realm more broadly.

Here is highlighted a key point of difference between the ECI and other citizens’ initiatives and referendums: where there is no public vote on the outcome of the initiative, there is no scope for the formation and inclusion in the process of a formal opposition to the issue of concern. The ECI does not contain any venue for opponents to the campaign to voice their opposition and question the claims made by and intentions of the organisers. When compared with

initiatives with a public vote and space for formal opposition, the impact of this on the capacity for generating discussion and debate becomes clear. In Liechtenstein, the parliament has the opportunity to make a counter proposal to an initiative ahead of the public vote, and can have its opposition recorded alongside the initiative proposal in the official ballot leaflet, which becomes a key focus for media attention on the initiative (Marxer 2013, p.43). In Switzerland, similarly, the government or parliament can register a counter-proposal to the initiative ahead of the popular vote, and Lutz notes that “campaigns get a lot of media attention prior to the vote on both sides” (2013, p.30). As Schiller and Setälä state, “the capacity of agenda initiatives to influence the public debate seems quite limited compared with initiatives which actually lead to a binding popular vote” (2013b, p.12). Where ECI campaigns are necessarily one-sided, the quality of any debate they generate is likely to be limited compared with other initiatives, and with the exclusion of opponents to the ECI from any formal input in the process questions must be raised about how closely outputs from the ECI embody the principle of the people as the appropriate source of political authority, since only one million citizens are required to support the proposal.

In addition to the European Commission, Carsten Berg, founder of The ECI Campaign, has also noted the generation of debate to be one of the key functions of the ECI, though he also raised the idea that the extent to which this is possible is contingent upon the response of the Commission to successful campaigns (Berg, interview). He has described generating public debate as “one of the beautiful and nice side effects” of ECI campaigns, perceiving it as “logically interconnected” with the triggering of legislative proposals (Berg, interview). If the Commission fails to act on successful ECIs and does not generate any legislative proposals, the level of debate generated is likely to be minimal: the more that the citizens are afforded a real impact on legislative outcomes (through agenda setting), the greater the scale of debate and discussion is likely to be. The Commission’s visible support for the ECI as a tool (in responding positively to concluded campaigns) is thus expected to affect the likelihood of future ECI

campaigns having a positive effect on fostering debate and discussion across the EU (Szeligowska & Mincheva 2012, p.281). Again this links with the earlier point about the difference between the ECI and other citizens' initiatives and referendums: without a popular vote at the end of the process where the people are granted a clear opportunity to decide on the outcome of the campaign, as in citizen initiated referendums elsewhere, public interest and the level of debate achieved is likely to remain low. This also highlights the importance of the links between the different stages of the policy making process, as influence at one stage is likely to be contingent on influence in another.

In addition, the relationship between the institutional agenda and public agenda is significant here and it is a relationship thought to be mediated by the media, which Wolfe, Jones and Baumgartner describe as "simultaneously an input and an output of the political system" (2013, p.186). The media both transmits issues on the institutional agenda to the public agenda and vice versa. However, where the Commission employs its agenda setting power and carefully controls what enters the EU's legislative agenda, deciding, as discussed above, in a seemingly arbitrary or, perhaps, overzealous way which ECI campaigns can be registered and which cannot, an obstacle arises in the smooth transmission of issues from the public to the institutional agenda. Where issues that groups of citizens deem important and want to place on the EU's institutional agenda are denied that opportunity through the Commission potentially acting in a heavy handed manner to retain its agenda setting power, the issues are prevented from being transmitted from the public to the institutional agenda. The way in which the Commission protects its right of initiative suggests therefore it might be resistant to the media's transmission of issues from the public to the institutional agenda.

The ability of the ECI to foster debate and discussion amongst the public in the EU is, nonetheless, likely to be dependent upon the extent to which the media engages with the topics of the campaigns. Tenreiro commented in 2014 that "the understanding of [the ECI] on

the part of the media is also quite unsatisfactory” (2014, p.88), with Berg and Thomson adding “mainstream media tends to be either unaware or misinformed, often equating the ECI with a simple petition” (2014, p.122). Given the lack of EU-wide media outlets (Grimm 1995, p.294; Kymlicka 1999, p.121), it may be that the discussion and debate that is generated as a consequence of the ECI campaigns is restricted to national or local media arenas, and focused on the issues of the campaigns rather than the ECI instrument itself. Berg noted the parallel and simultaneous debates taking place in national arenas on the issues raised by the first few ECI campaigns, stating that “we don’t have a European public space yet given all the different languages and the cultural differences and so on” (Berg, interview), and evidence from the four ECI campaign case studies supports this idea. The Right2Water initiative generated significant national media attention in Germany, for example, where it collected over 70 percent of its 1.8 million signatures (WATER is a Human Right 2013c). It received coverage on public service TV broadcaster ZDF, both ahead of the launch of the campaign in April 2014 and, significantly, with comedian Erwin Pelzig on the political satire show ‘Neues aus der Anstalt’ (which reports average viewing figures around three million per episode) in January 2013, during which Pelzig directly publicised the URL to the Right2Water webpage (das haku 2013; WATER is a Human Right 2013a; WATER is a Human Right 2012).

Similarly, the One Single Tariff ECI reportedly received media attention from national outlets in France, Belgium, Lithuania and Estonia, with campaign organiser Vincent Chauvet stating that

“you cannot do a European campaign, it doesn’t exist. You have national campaigns. You have different societies using different media, different history, different languages, so it is impossible to have a European campaign.” (Chauvet, interview)

Fraternité 2020 did succeed in gaining media coverage in one of the largest European news channels, ARTE Journal, which led to the peak of its signature collection success in May 2012 (Pronckute 2014). Still, it remains the case that even one of the largest European media outlets does not regularly attract as much attention as national news channels. In addition, the

organisers of the One of Us ECI cited a lack of general media attention and promotion as a key handicap of their campaign (Del Pino 2014, p.26). Limited understanding of and attention on the ECI from the media, and its often localised nature, could therefore be considered a barrier to the generation of debate and discussion related to the ECI.

Online social media has, however, provided an additional avenue through which ECI organisers can generate discussion and raise awareness of their campaigns, and one that many citizens' committees have used. Margetts et al. have described how the internet "facilitates online communication networks" and the fast spreading of information whilst reducing the costs of interaction (2011, p.322), and Loader and Mercea conclude that "social media may be at the forefront of the shift towards a more participatory political culture" (2011, p.764). The rise of the use of social networking sites such as Facebook and Twitter indicates

"the displacement of the public sphere model with that of a networked citizen-centred perspective providing opportunities to connect the private sphere of autonomous political identity to a multitude of chosen political spaces." (Loader & Mercea 2011, p.758)

One of such opportunities for connection could be the ECI. Of the four ECI case studies, three have reported relying upon social media for generating awareness of their campaigns and directing individuals to sign their ECI online (Right2Water, Fraternité 2020 and One Single Tariff) (Sanchez, interview; Pronckute, interview; Chauvet, interview). The One of Us campaign relied primarily on the collection of paper based signatures and as such the use of online social networking was not as high a priority for them (Del Pino 2014). Table 6.2 provides information regarding the four ECI case studies' use of Twitter in the six months prior to their signature collection deadlines.⁴³

⁴³ The periods covered are 1 May – 1 November 2013 for Fraternité 2020, Right2Water and One of Us, and 1 June – 1 December 2013 for One Single Tariff.

| | N° Tweets | Tweets/ Day | N° User Mentions | % Tweets Re- tweeted | Mean Re- tweets/ Tweet | Total Followers ⁴⁴ |
|--------------------------|-----------|----------------|---------------------|----------------------------|------------------------------|----------------------------------|
| Fraternité 2020 | 379 | 2.05 | 420 | 38.3 | 2.41 | 1,317 |
| Right2Water | 1,111 | 6.01 | 197 | 26.8 | 2.78 | 4,133 |
| One of Us | 381 | 2.06 | 209 | 68.8 | 5.10 | 1,084 |
| One Single Tariff | 94 | 0.51 | 46 | 20.2 | 2.00 | 817 |

Table 6.2: The ECI case studies' use of Twitter in the last six months of their campaigns.⁴⁵

The data present in table 6.2 suggests that a more extensive use of Twitter may lead to a more successful campaign. The Right2Water campaign clearly was the most prolific user of Twitter in the final six months of their signature collection period, with 1,111 original tweets being re-tweeted an average of 2.78 times, which equates to over 3,080 messages regarding their campaign being circulated over the six-month time frame, and each original tweet will have been viewed by around 4,000 individuals. Whilst the other case study that was successful in collecting over 1 million signatures, One of Us, produced far fewer tweets in the same time period at just 381, these were re-tweeted an average of 5.10 times, indicating that almost 2,000 tweets were sent in the six months before the end of signature collection. It should also be restated that the One of Us campaign has been clear that it did not focus its attention on online signature collection. Fraternité 2020 generated a similar number of tweets to One of Us, but despite also having a similar number of followers its tweets were re-tweeted significantly less frequently, with approximately 900 messages circulating in the final six months of their campaign. One Single Tariff, in spite of focusing all of its campaign efforts on online signature collection and relying on social media for generating awareness of its issue, tweeted

⁴⁴ As at 25/09/15.

⁴⁵ This data was collected using Twitonomy Twitter Analytics (www.twitonomy.com).

significantly less than the others in the final six months of its collection period and has fewer followers and re-tweets than the others. The organiser of the campaign since reflected that “we thought that doing just a Facebook campaign, very light very easy, we thought it would give us one million signatures. But we did not succeed” (Chauvet, interview). However, it may be the case that their campaign efforts reduced after the Commission proposed an end to roaming charges within the EU early on in the campaign period, as was the goal of their ECI.

Despite the possible concern about the potential of the ECI to generate debate and discussion due to the lack of traditional media interest and the Commission’s lack of action on successful ECIs to date, it therefore seems that use of social media can generate online debates, and that the more prolific the use of these mediums the greater the potential success in terms of signature collection of the ECI campaigns. The figures in terms of Twitter support and discussion however should be compared relative to other campaigning organisations: it is clear that none of the ECI campaigns so far have generated anywhere near as much coverage through Twitter as those for many national referendums. For example, as of January 2016, 16 months following the popular vote, the official Yes Scotland (the campaign against Scottish independence from the UK for the 2014 referendum) Twitter account still had over 108,000 followers (Yes Scotland 2016). In the build up to the UK’s EU membership referendum, in addition, despite no official campaigns having been identified or a date for the referendum being set, campaign groups are already generating a presence on social media, such as Britain Stronger In Europe, which has gathered almost 76,000 likes on Facebook (Britain Stronger in Europe 2016), and Get Britain Out, with just under 43,000 Facebook likes (Get Britain Out 2016). Once again it is likely that both the general lack of awareness of the ECI and its difference from these other referendum campaigns which culminate in a popular vote, as discussed above, is likely to be affecting the level of social media attention the ECI campaigns can achieve and consequently the extent of the discussion and debate they are able to generate.

Irrespective of these relatively low levels of both traditional and social media coverage, several ECI organisers have noted feeling that their campaigns have had an impact on the discussion and debate stage of the policy making process. One of the key achievements of the Fraternité 2020 campaign was reported to be the raised awareness of EU exchange programmes generated through primarily online debate (Pronckute 2014, p.33). Pan-European debate to raise awareness of issues was also noted as a key objective and achievement of several other campaigns, including End Ecocide (Merz 2014, p.37), UBI (Jourdan 2014, p.44) and MEET (Gorey 2014, p.54). Therefore, whilst the kind and extent of pan-EU debate anticipated by the European Commission, among others, has not emerged in practice, some local and national level discussion through traditional media and low levels of online discussion through social media has been seen and has resulted in increased signature collection for the relevant ECI campaigns.

Decision making

As already noted, the ECI Regulation does not include the opportunity for citizens to make legislative decisions: its intended influence remains limited to inviting the Commission to generate a legislative proposal, and the decision on any proposal rests jointly with the European Parliament and Council of Ministers in line with the OLP. This is in stark contrast to many referendums and citizens' initiatives elsewhere. When it comes to decision making, referendums obviously have a significant impact as they enable the citizens to make the final decision themselves (Smith 2009, p.170). This capability is not afforded to the ECI, so comparisons are difficult to draw here. Nonetheless, the indirect effects of even unsuccessful referendums on policy decisions must not be discounted: Kriesi and Trechsel (2008, p.60) note the 'flywheel' effect as a key indirect effect of initiatives in Switzerland, where Linder found approximately one third of all initiatives, successful or not, left a trace in future legislation (1999, p.260). This therefore suggests that there may be potential for the ECI to have an

indirect impact on legislative decision making despite it not including a decision making mechanism within itself.

The Commission has hinted at influence over decision making afforded to ECI campaigns. Vice President Šefčovič suggested, one year following the launch of the initiative, that the first ECI that results in legislative changes will demonstrate how citizens are able to use this tool to “make a real difference to the way in which EU policy is designed and implemented” (Šefčovič 2013b), suggesting a role for the ECI in the decision making and implementation (see below) stages of the policy making process. Exactly how this influence is expected to play out in practice is not elaborated, however. Furthermore, as with the agenda setting and debate generating criteria, the consequences the EU expects are not necessarily those that have emerged in practice thus far.

The four ECI case studies can also shed some light on the impact of the ECI on political decision making. Three of the four cases provide anecdotal evidence of influencing the EU in its decision making on particular pieces of legislation. First, the Right2Water initiative saw changes to legislation, in the form of the removal of water services from the Concessions Directive, during its campaigning period (Van den Berge 2014). Under the Concessions Directive, pressure would have been placed on municipalities to create competition for public services and put concessions for water and sanitation services on the market: a step towards their privatisation. Former European Commissioner for the Internal Market, Michel Barnier, referred to the Right2Water ECI in announcing the changes made, stating that “it is our duty to take into account the concerns expressed by so many citizens” (European Commission 2013b), in a move referred to as the “first political success” of the Right2Water campaign (WATER is a Human Right 2013b). The impact of the Right2Water ECI on legislative outcomes from the EU is also yet to be concluded, as the conclusion of the European Parliament’s Own Initiative Inquiry into the Right2Water campaign called on the Commission to initiate legislation in line with the

requests of the ECI, despite the Commission's official response signalling its reluctance to introduce legislation as a direct consequence of the campaign (as discussed further below) (European Parliament 2015b). This therefore implies the potential impact of the ECI on legislative outcomes from the EU both before the completion of the signature collection period and well beyond the conclusion of the official ECI process as set out in the Regulation.

Second, the campaign with undoubtedly the most significant influence on legislative outcomes thus far is the Single Communication Tariff ECI. The ECI campaign was cited as a reason by then Commission Vice President Neelie Kroes for bringing forward the decision to abolish roaming charges within the EU and subsequently influencing the Parliament and the Council of Ministers to make the decision to introduce the legislation (Chauvet, interview), and she even invited those involved with the One Single Tariff Campaign to work alongside her to achieve this (One Single Tariff 2013b). In October 2015 the European Parliament voted to adopt the Commission's proposal to end roaming charges within the EU in June 2017 (European Commission 2015e). Similarly, Doris Pack MEP cited the influence of the Fraternité 2020 campaign on the Parliament's decision to increase the budget for EU exchange programmes by 40 percent through the creation of Erasmus+ in 2014, which brought together seven pre-existing exchange programmes, even though this did not directly address the core issue that was being campaigned for in the ECI (Pronckute, interview). As with the Fraternité 2020 campaign, however, whilst there is evidence of the influence of these ECIs on decision making within the EU, the legislative objectives of the campaigns have not been fully achieved, as the organisers of the One Single Tariff ECI also feel like the legislative outcome they influenced is not as broad, simple or implemented as quickly, as they were campaigning for (One Single Tariff, 2013a). As Chauvet stated, "it doesn't go far enough, it's too complex, it's too slow, it doesn't tackle new ways of using your mobile phone" (Chauvet, interview). Nonetheless, it is possible to see that ECI campaigns can have some influence, regardless of how small, on the legislative decision making stage of the policy making process, even before the ECIs have

completed their signature collection period or when they have not successfully collected the required signatures for consideration by the Commission, and this impact is not accounted for in the Regulation.

Implementation

The implementation of policy is something that referendums and initiatives are not often concerned with. There rarely exists a role for citizens in the oversight of implementation, though importantly the existence of courts or ombudsmen to which citizens can appeal regarding the implementation of decisions made through initiatives and referendums can empower citizens to affect this stage of the process (Smith 2009, p.124). Notwithstanding the lack of formal role for citizens in the implementation of decisions made regarding ECI campaigns, as noted above, Commissioner Šefčovič did mention a role for citizens in the design *and implementation* of EU policy (Šefčovič 2013b), though it is not clear exactly how he meant this to occur in practice. The European Ombudsman can be appealed to in cases where organisers or citizens are dissatisfied with procedural aspects of the way their campaign has been dealt with by the EU, for example where the Commission has refused the registration of the initiative, but cannot consider complaints regarding the Commission's final decision on the ECI (O'Reilly 2014, p.91).

There also exist courts within the EU to which appeals can be made regarding the implementation of the ECI Regulation. Six campaign organisers whose ECIs were refused registration ('One Million Signatures for a "Europe of Solidarity"'; 'Minority Safepack – one million signatures for diversity in Europe'; 'Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!'; 'Cohesion policy for the equality of the regions and the preservation of regional cultures'; 'Ethics for Animals and Kids'; and 'Stop TTIP') have lodged appeals with the General Court of the European Union against the Commission's decision not to register them (Court of Justice 2014b; Court of Justice 2012; Court of Justice 2013b; Court of Justice 2014a; Court of Justice 2014d; Court of Justice 2013a). On 30 September 2015, the

Court ruled on the first of the cases, One Million Signatures for a “Europe of Solidarity”, in favour of the European Commission’s refusal to register it (General Court of the European Union 2015a). Furthermore, in July 2014 the One of Us citizens’ committee has lodged an appeal with the General Court regarding the Commission’s response to the ECI, asking the Court to annul the Commission’s Communication in response to the campaign or to annul the aspect of the Regulation on the ECI regarding the Commission’s required response to successful ECI campaigns, “alleging violation of the democratic process” (Court of Justice 2014c). At the time of writing only the hearing for the case on the Cohesion policy for the equality of the regions and the preservation of regional cultures campaign had been held, on 15 December 2015, and a judgement was still pending (Court of Justice 2013a). Whilst the outcomes of these cases are still pending it is difficult to evaluate the extent that the opportunity to question decisions made through courts allows the ECI influence over the implementation stage of decisions, but the existence of the opportunity is significant in terms of potential influence over implementation. This can be seen with the General Court’s ruling on airfreight cartels in December 2015, in which it annulled €790 million of fines imposed by the Commission on airline companies for their involvement in the cartels (General Court of the European Union 2015b), the Court is not afraid to overturn significant Commission decisions.

Further, albeit limited, evidence exists of citizens being afforded influence on the implementation stage of the policy making process as a consequence of the ECI, though this is confined to those ECIs that have had impact at the agenda setting and decision making stages of the policy making process. The influence of successful campaigns such as Right2Water is restricted to reminding the EU institutions of the assertions made in their response to the initiative and ensuring these are acted upon (WATER is a Human Right 2014d). As a consequence of the organisers undertaking this role, the European Parliament Committee for Environment announced its disappointment with the Commission’s response to the Right2Water initiative, calling it “regrettable that the communication lacks ambition” and

stating that “the response given by the Commission to the Right2Water ECI is insufficient” (European Parliament 2015b). Subsequently, the Parliament launched an Own Initiative Report⁴⁶ to investigate the demands of the campaign in greater depth, which could lead to the proposal of relevant legislation as desired by the ECI (WATER is a Human Right 2015a). On 8 September 2015 the European Parliament voted in support of the Own Initiative Report and asked the Commission to propose the relevant legislation to recognise the right to water as a human right (European Parliament 2015c). The resolution states that the Parliament

“[c]alls on the Commission, in line with the primary objective of the Right2Water ECI, to come forward with legislative proposals, and, if appropriate, a revision of the WFD⁴⁷, that would recognise universal access and the human right to water; advocates, moreover, that universal access to safe drinking water and sanitation be recognised in the Charter of Fundamental Rights of the European Union.” (European Parliament 2015b)

This therefore demonstrates the significant potential longer-term effects of ECIs throughout the policy making process.

Similarly, in the case of One Single Tariff, once the Commission confirmed its intention to abolish roaming fees, the ECI organisers shifted their attention from campaigning for this to instead focusing on lobbying politicians (see One Single Tariff, 2014) to implement the legislation according to the specified timing and to “not fall under the pressure of telecom lobbies to delay the end of roaming” (Chauvet, interview). Therefore there can be seen scope for some ECI campaigns to influence and impact upon the implementation of decisions in the policy making process, albeit limited for the majority of the ECIs.

⁴⁶ Own Initiative Reports are a tool available to committees of the European Parliament to explore issues of interest or concern to them with a view to expressing the Parliament’s opinion on the issue. They are described by the Parliament as “important tools in the early phase of the legislative cycle trying to shape the agenda” (European Parliament 2015a).

⁴⁷ Water Framework Directive 2000 (Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy)

Indirect impact

Aside from the direct impacts of the ECI on the EU's policy making process, its indirect impacts should not be discounted. Political participation, it is thought, can lead to a sense of political competence or efficacy (that actions can have consequences), which in turn can increase the likelihood of future participation (Pateman 1970, p.46). This is known as the spillover thesis and is supported by evidence from studies of the effects of workplace participation (Pateman 1970, p.105). Through participating in the ECI citizens may develop greater feelings of political efficacy, resulting in them increasing their participation in additional areas. The implication here therefore is that the ECI can have broader positive implications, or impacts, that can contribute to enhancing the democratic legitimacy of the EU as a whole.

This view is not however without controversy. There is increasing concern that the discovery that an individual's participation is ineffective or has little direct impact can demotivate that individual from future participation, over fear the same outcome should occur. As Irvin and Stansbury warn, "if citizen participants are misled into thinking their decisions will be implemented, and then the decisions are ignored or merely taken under advisement, resentment will develop over time" (2004, p.59). Similarly, Carter found that "where someone finds participation disappointing, frustrating, demoralising or stressful, then it is far less likely (although not impossible) to increase political efficacy" (2006, p.422). As discussed above with direct impact, if European citizens feel the ECI is not being taken seriously by the EU institutions it may lose its credibility and participation is likely to dwindle; nonetheless what I am focusing on here is potential indirect impacts of the ECI more broadly than future participation in the ECI: participation in alternative ways and at different levels.

In the case of the ECI so far, we can see several examples of where participation in the ECI has influenced political participation elsewhere, leading to broader consequences of the ECI and support for the spillover thesis. In many instances, these consequences are witnessed on the local level (Thomson 2014). The Right2Water campaign has impacted local level politics across

many countries in the EU: Spain, Ireland (the largest anti-austerity protest in over ten years took place following the government's announcement of a new water company and its charges (WATER is a Human Right 2014c)), Greece, Lithuania, France (the ECI was quoted as water services in Montpellier were returned to municipal control (WATER is a Human Right 2014f)), Portugal and Germany have all felt some local level implications of the ECI (Sanchez, interview). Sanchez even cited local level impacts such as these as an objective of the campaign, as he said

“I never thought that they would actually allow to do legislation the people so in terms what it allows you is actually to go back to the local level where it matters to people with a flag saying we have actually managed to win this battle, let's win the next one.”
(Sanchez, interview)

An unofficial referendum on water privatisation was organised by local activists in Thessaloniki after witnessing the hearing of the Right2Water ECI in the European Parliament, against the wishes of the Greek government and despite the resistance of the local authorities and electoral laws (Sanchez, interview). Sanchez described the atmosphere at the viewing of the public hearing, where 500 people were watching the live webstream from the Parliament, as “like a football match” (Sanchez, interview). The unofficial referendum achieved a turnout of 218,000, approximately 50 percent of the electoral register in Thessaloniki, and 98 percent of voters voted against privatisation of water (Sanchez, interview). Following the referendum, the privatisation of the water supply to Athens and Thessaloniki was frozen in June and subsequently cancelled in August 2014 (WATER is a Human Right 2014a). In addition, following the election of the left wing Syriza government, new social tariffs were introduced in the two largest cities to facilitate access to water for the poor, as advocated by the ECI campaign (WATER is a Human Right 2015b).

A similar case has occurred in the small village of Alcázar de San Juan in Spain, where the local water infrastructure was due to be sold to a subsidiary of an international water company. The citizens of the village collected 11,000 signatures against the move (from a population of 30,000 inhabitants), and they occupied the city council buildings in protest (WATER is a Human

Right 2014b). Additionally, the One of Us ECI, following the decision of the European Commission not to take any legislative action in response to its proposals, has created a European federation of activists that will continue to act in pursuit of the ECI's objectives, as described in chapter five. The organisers envisage the federation becoming "a permanent structure among European institutions", and it has already been involved in protest movements related to the right to life in The Hague and Paris (One of Us 2014d; One of Us 2015; One of Us 2014c). A further ECI that has reported significant local level successes is the campaign '30kmh – Making Streets Liveable'. As a consequence of the ECI campaign and the debate generated, lower speed limits were implemented in local areas across Spain, Poland, France, Slovenia and Germany (Agthe 2014, p.50). It is possible to see, therefore, how participation in the ECI has generated some further political participation and impacts, primarily at the local level. The indirect impacts of participation in the ECI and the ways in which it can spread participation and generate direct consequences on the local level are highly significant and must not be discounted.

Conclusion

In order to have a positive impact on the democratic legitimacy of the EU, the ECI must be seen to have observable consequences. I have shown here that the ECI can have both direct and indirect consequences, though most significantly in often-unexpected ways. In terms of its direct impact, clearly the ECI was designed primarily, if not solely, to have an influence on the agenda setting stage of the policy making process. Interestingly, in practice this appears to be the stage on which the ECI has had the least impact thus far, as nothing new has been placed on the EU's legislative agenda as a direct consequence of a successful ECI campaign, with the Commission not proposing to initiate any legislation in response to either the Right2Water or One of Us campaigns.

More unintended consequences of the ECI, that are not set out in the Regulation underpinning it, can be seen on the later stages of the policy making process. Perhaps the stage at which the ECI has generated the greatest observable consequences is that concerned with discussion and debate, where many have suggested the ECI can have added value. However this has so far been confined to the local or national level and is highly contingent upon the level of media attention the campaign attracts. The media attention has been low, given the lack of space for official opposition to the campaigns to create public debate and the absence of EU wide media outlets. Nonetheless social media has been used effectively by some ECI campaigns to generate online discussion of the issue at hand, though when compared with the levels of attention gathered by referendums and initiatives in other settings this remains low, yet not insignificant. Some ECI campaigns have also demonstrated limited influence over the decision making and implementation stages of the policy making process, where the ECI is afforded zero official influence under the Regulation. Specifically, the Right2Water ECI influenced the decision to remove water from the Concessions Directive in 2013 and its continued efforts encouraged the European Parliament's Own Initiative Inquiry which resulted in its asking the Commission to propose legislation in response to the ECI. The One Single Tariff ECI has also seen significant legislative outcomes in response to its campaign in the form of the ending of roaming charges throughout the EU from June 2017, though the citizens' committee remain dissatisfied with the scope and speed of the legislative action.

In terms of indirect impact, there is evidence to suggest that, in line with the spillover thesis, participation in an ECI campaign can trigger political participation in alternative arenas, most notably local protest movements. The Right2Water ECI in particular has generated local movements against water privatisation across the EU, some of which have proved successful in terms of their objectives in preventing the privatisation of water services. These unanticipated indirect impacts must not be discounted as important consequences of the ECI, as they provide

evidence of positive effects of the ECI on the democratic legitimacy of the EU in terms of the realisation of the people as the appropriate source of political authority.

Chapter 7: Issues

As highlighted in chapter three, the third criterion against which the ECI should be evaluated relates to the purposes for which it is used. The nature of the issue that forms the basis of the campaign is significant for democratic legitimacy in two key ways: first in terms of pursuing the proper ends of government, as required by the definition of democratic legitimacy I laid out in chapter one, and second for the effect of the campaign on the previous two criteria of inclusion and impact (building on the discussions of the two logically prior criteria of chapters five and six). Many ECI campaigners have reflected on the importance of the issue addressed in the campaign when asked what advice they would give to individuals considering launching an ECI campaign, suggesting that it should be, variously: general, uncomplicated, familiar, realistic, tangible, emotional, reflect current debates at national or EU level, and have a moral or ethical dimension (Gorey, 2014; Thomson, 2014; Berg, interview; Chauvet, interview; Pronckute, interview; Sanchez, interview). The inclusion and impact of the ECI process is one thing, but these procedural elements are necessary yet not entirely sufficient criteria to guarantee a positive impact of the ECI on the EU's democratic legitimacy, given that the definition of democratic legitimacy includes the requirement for the proper ends of government to be pursued.

This chapter explores how the nature of the issue pursued in ECI campaigns can affect the extent to which it contributes or detracts from the EU's democratic legitimacy. There are two key ways in which the issue matters for democratic legitimacy: normative justifiability, in terms of the proper ends of government, and issue salience for effect on inclusion and impact. In order to be successful on the criteria of inclusion and impact, an ECI campaign needs a certain level of issue salience, and in order to contribute to the democratic legitimacy of the EU, the ECI must, once its inclusion and impact be established, be used for normatively justifiable ends.

In this chapter I elaborate upon both of these features and consider how the four ECI case studies reflect these two characteristics.

First, in terms of normative justifiability, I set out how this should be specified, that is, that causes are normatively justifiable insofar as they recognise the political equality of all EU citizens. In line with my definition of democratic legitimacy, causes that are normatively justifiable are those that uphold or extend the political or democratic rights of all. As discussed in chapter three, procedural aspects of legitimacy are necessary but not sufficient for ensuring the democratic legitimacy of a political system, and substantive considerations must also be made. By considering the ECI against this criterion, in terms of my four case studies, I note how the ECI is being used for both issues of general popular appeal and the pursuit of niche interests, but campaigns that appeal to rights are prominent and tend to be more successful than those that attract specific audiences. Indeed the (albeit unofficial) ECI with the greatest signature collection success, the Stop TTIP campaign, had a specific democracy-enhancing objective. It is also observed that initiatives framed in terms of rights are likely to have the greatest impacts in terms of those highlighted in the previous chapter. Therefore, it is possible to see the potential of the ECI to have a positive effect upon the democratic legitimacy of the European Union where it is used to pursue normatively justifiable issues.

Second, I argue that issue salience can have a significant impact on the success of ECI campaigns in terms of the two earlier criteria of democratic legitimacy: inclusion and impacts. Nonetheless I highlight the nuances of this concept and show how the type as well as the level of salience is significant: where an issue is so salient that political action has already been taken, either at the EU or national level, this can detract from the inclusion and impact of an ECI campaign, and issues that are salient primarily because they are highly controversial, whilst attracting high levels of participation and impact on discussion and debate, might be less likely to produce impacts on the agenda setting stage of the policy making process.

Normative justifiability of issues

ECI campaigns can affect the EU's democratic legitimacy if the issue addressed in the campaign is, or is not, normatively justifiable, provided that the criteria of inclusion and impact have already been established. In order for the causes being pursued in ECI campaigns to be considered justifiable, they must respect equally the perspectives and interests of each citizen. This goes back to the basis of democracy in recognising the intrinsic political equality of all individuals and the role and objective of democratic political institutions "to advance the common good and to make sure that each person's well-being is advanced equally" (Christiano 2008, p.4). As Beetham highlights, power that is justifiable to the people, and therefore legitimate, is power that claims to serve the common interest of the subordinate, and the subordinate must acknowledge that their common interest is indeed being served (1991, pp.82–6): only "where the ultimate source of authority is located wholly in the people ... are those subordinate to government recognised as the ultimate judge of what their interests are" (Beetham 1991, p.89). Therefore, the common interest must find expression in policy outcomes in order for them to be considered democratically legitimate. In Scharpf's terms, "political choices are legitimate if and because they effectively promote the common welfare of the constituency in question" (1999, p.6).

How this 'common welfare' or 'common interest' can be promoted is problematic given the lack of shared identity in the EU, as discussed in chapter two. Whilst I argued that this lack of collective identity might not be problematic for democratic legitimacy in the EU when it comes to the criterion of inclusion, it raises an additional problem here. It may be especially difficult to identify common interest within a citizenry with 28 distinct national identities. I will argue here that what is fundamental to democratic legitimacy, however, and in the common interest of all citizens, is a guarantee of the basic democratic rights that facilitate their participation in the democratic process. I will also highlight some alternative solutions to the question of what

outcomes can be considered normatively justifiable and explain why they are less adequate for the definition of democratic legitimacy.

The best way of ensuring that outcomes are normatively justifiable and can reflect some form of a common interest, especially within the EU, is if they uphold the political equality of all citizens. Outcomes will be democratically legitimate insofar as they do not infringe the rights of all that are essential to the democratic process and in doing so reflect political equality. The suppression of basic political or democratic rights would entail a violation of the principle of political equality, and as such to recognise the equality of all citizens, as inherent within my definition of democratic legitimacy, is to ensure that these rights are upheld (Christiano 2004, p.289). Political rights are required for the realisation of political equality (Dworkin 1995, p.5), and thus constitute the proper ends of government as required by democratic legitimacy. Dahl reminds us that

“because certain rights, liberties and opportunities are essential to the democratic process itself, as long as that process exists then these rights, freedoms, and opportunities must necessarily also exist.” (1989, p.89)

Where outcomes of a democratic process could be seen to violate basic democratic rights, the process is no longer seen as realising and upholding the political equality of its citizens and therefore can no longer be considered democratically legitimate (Christiano 2008, p.11).

Estlund takes issue with some of these claims about the importance of the recognition of political equality for political outcomes to be considered normatively justifiable. In discussing Christiano’s position, he argues that it is not necessarily obvious that unequal political rights, in terms of voting power, would entail the disregarding of some individuals’ interests and lead to political outcomes that did not reflect the political equality of the citizens (Estlund 2009, p.244). There could feasibly be, in his view, a group of individuals who know best the interests of the whole citizenry and could make sure that the well-being of all was advanced through political outcomes, which does not require the respect for equal political rights of all

individuals to participate in the democratic process (Estlund 2009, p.245). Whilst Estlund also argues against such unequal political rights, or an epistocracy of some kind (such as of the educated), he does so on alternative grounds, supposing that whatever features a group that is granted extra political power might have that justify their additional rights, or the undermining of these for those outside of the group, the powerful group might have other additional features that bias them in their capacity to generate the best, epistemic, political outcomes (2008, p.222). Estlund fails to see the relationship Christiano highlights between equal political rights and normatively justifiable political outcomes.

Christiano responds to Estlund's critique by pointing out that there have been instances of dictatorships and other non-democratic systems that have claimed to act in pursuit of the interests of all citizens and produce normatively justifiable outcomes (2009, p.238). He argues that "no elite could conscientiously believe that they generally know the interests of others better than these others themselves do", and "it is more or less socially impossible that there be agreement that elites have such knowledge" (Christiano 2009, p.238). Thus this returns us to democracy being the most appropriate means of recognising the intrinsic equality of individuals and the identification of the people as the appropriate source of political authority within the definition of democratic legitimacy, and we are reminded of Beetham's quote that only "where the ultimate source of authority is located wholly in the people ... are those subordinate to government recognised as the ultimate judge of what their interests are" (Beetham 1991, p.89). Democratic legitimacy requires that political outcomes reflect the political equality of the citizens, so any political outcome that might infringe the rights, freedoms and opportunities essential to the democratic process cannot be considered normatively justifiable.

What exactly these rights, freedoms and opportunities include is the subject of lengthy debate (Christiano 2004, p.289; Dworkin 1995, p.5), and is likely to be different depending on the

specifics of the political system in question. However, some basic rights that are essential to democratic legitimacy and the upholding of political equality, and that will be applicable within any type of political system, can be identified. Saward highlights the right to freedom of expression and freedom of association as “essential conditions of democracy”, suggesting that “each should therefore be constitutionally guaranteed on an equal basis to all citizens, if a system is rightly to be called a democracy” (1998, p.89). Freedom of association and to choose one’s own aims in life are “so fundamental to the well-being of a person”, according to Christiano, “that no society that set them back for all or some substantial part of the population could be thought to advance the common good” (2004, p.289). Dworkin, similarly, whilst noting that the rights essential to democracy are “a matter for debate”, goes on to identify rights to freedom of political speech, freedom of conscience and of religion as well as a guarantee that outcomes will not reflect prejudice towards any group, as preconditions for democracy (1995, p.5). For Dahl, the most fundamental right a person can possess is the “right to self-government through the democratic process” (1989, p.169). Necessary to the undertaking of this right are a set of additional basic political rights, including the right to freedom of speech, freedom of the press and freedom of assembly (Dahl 1989, p.170). These rights are essential to the democratic process, which recognises the political equality of the citizens. It is therefore feasible to identify, amongst others, rights such as freedom of speech and expression and of assembly and association as examples of the political rights that outcomes must not contradict in order for the process through which they are reached and the political system in which it is embedded to be considered democratically legitimate.

Nonetheless, there are potentially three alternative ways that this question of common interest could have been addressed, which I will argue are less adequate from the perspective of democratic legitimacy than that which I have set out. First, common welfare as the proper ends of government could be understood from a utilitarian perspective. Bentham summarises the classic utilitarian approach in stating “it is the greatest happiness of the greatest number

that is the measure of right and wrong” (1776, p.93). However, this majoritarian means of identifying the common welfare is insufficient, since it fails to fulfil the principle of political equality on which democratic legitimacy is based. Kukathas and Pettit highlight this when describing utilitarianism as

“an infeasible moral conception because it misrepresents our nature, viewing us as creatures concerned primarily with desire-satisfaction, and failing to see how important freedom and equality are.” (1990, p.58)

The main problem with utilitarianism is that it potentially allows for the existence of persistently dissatisfied minorities, which, as Christiano points out, suggests that the political system “fails to satisfy public equality fully” (2008, p.5). Utilitarianism undermines the political equality of citizens because a “utilitarian decision may be to sacrifice [a] person for the sake of another’s well-being or for the sake of many other persons’ well-being” (Christiano 2008, p.22). Relying on a utilitarian conception of the common good thus could feasibly lead to the denial of fundamental political rights to a minority by a majority decision, yet this outcome would clearly undermine the political equality of the citizens and as such cannot be considered a democratically legitimate outcome. Dahl argues that if a majority was to deprive a minority of any primary political right, as highlighted above, then the procedures or process by which the decision was made cannot be considered democratic, since these rights are “integral to the democratic process. They aren’t ontologically separate from – or prior to, or superior to – the democratic process” (1989, p.170). Utilitarianism, therefore, since it could feasibly lead to the denial of equal political rights to a minority whilst bringing maximum happiness to the majority, is an inadequate response to the question of democratically legitimate outcomes that reflect the common interest of the citizens.

Second, the achievement of common welfare could be articulated from the perspective of distributive justice, or in terms of the distribution of goods and resources. Considering rights in a broader sense than those fundamental democratic rights I have highlighted, we could be

prompted by Rawls to remember that the rights of the least advantaged should, in particular, be advanced or upheld. Rawls' second principle of justice, which he argues would be devised by individuals in the original position behind the veil of ignorance, states that any inequalities in society are to be organised so that they are "to the greatest benefit of the least advantaged" and also "attached to positions and offices open to all under conditions of fair equality of opportunity" (Rawls 1971, p.83). Any inequalities in society are justifiable, therefore, so long as they "maximise, or at least all contribute to, the long term expectations of the least fortunate group in society" (Rawls 1971, p.151).

However, I argue that this is not the most appropriate means of addressing the issue of common welfare for the purpose of this thesis. Dahl argues that the democratic process is in itself a means to distributive justice, as the process of democracy determines the distribution of power and authority with a political system and in turn the distribution of goods within the system (1989, p.191). This means that democratic legitimacy does not necessitate an independent standard of distributive justice beyond the existence of a democratic process. Hence the most important feature of political outcomes is to uphold the democratic rights of the people necessary to participate in that democratic process, as I have argued above. Whilst there is much debate about the relationship between democracy, legitimacy and justice, in discussing here how the normative justifiability of issues affects the contribution of a political institution to the democratic legitimacy of the system in which it is embedded, the emphasis remains on democracy and the distribution of democratic rights as compatible with political equality, and not with the distribution of goods and resources more broadly, as Rawls' principles prescribe.

An ECI campaign can therefore contribute to the democratic legitimacy of the EU if the issue it pursues does not seek to undermine the basic rights of all citizens that are fundamental to the democratic process. As already discussed in chapter five, concerns were raised early on that

the ECI would be a tool for the elites in the EU to advance their own interests, for example for businesses to campaign for increased advantages for their specific business interests at the expense of the general interest of the citizens (Thomson 2014). It is indeed possible that because, on paper, ECI campaigns need the support of only one million EU citizens to lead potentially to new EU legislation, a minority of the EU population might trigger a political outcome that is not agreeable to the interests of all citizens or could potentially disadvantage them. While there have been instances of business interests pursuing ECIs that seek to serve their specific interests, such as the European Free Vaping Initiative (EFVI) pursued by the e-cigarette industry, industry oriented campaigns have notably had limited success: EFVI collected only 180,000 signatures (European Commission 2015b). The majority of the ECIs that have been registered by the Commission have been, as discussed in chapter five, pursued by groups of citizens, mostly with the backing of a pre-existing organisation, with the stated purpose of pursuing an issue of general interest.

What is significant to note, however, is that the first three ECI campaigns to collect the requisite number of signatures to force a response from the Commission have all be framed using the language of rights. The rise in the significance of rights within European Union discourse should be noted: whilst rights (specifically human rights) have been referred to as a 'principal characteristic' of the Union, they have gained in prominence since the 1960s primarily due to the European Court of Justice's affirmation of the importance of rights through its constitutionalisation of the EU's treaties (Von Bogdandy 2000, pp.1307–8; Alston & Weiler 1999, p.6). It was not until the Treaty on European Union (Maastricht) in 1992 that, alongside European citizenship, the concept of rights became explicitly recognised in the EU's treaty basis, and in 2009 the coming into force of the Lisbon Treaty made the EU Charter of Fundamental Rights binding on the EU institutions and member states (Kerikmäe 2014, p.1). The EU Charter of Fundamental Rights includes those basic political rights essential to the democratic process such as freedom of thought, conscience and religion, freedom of

expression and information, and freedom of assembly and association (European Union 2000). As the ECI Regulation specifies that all ECI should be compatible with the existing treaties, it is possible to assume that no issue pursued through an ECI campaign could infringe the democratic rights that are granted equally to all citizens of the EU and that are essential to the democratic process.

Successful ECI organisers may have reacted to the growing trend of rights discourse in the EU in their choice of wording in the descriptions of their purposes. Right2Water, One of Us and Stop Vivisection all used the word ‘rights’ in describing their campaigns on the ECI official register, whether referring to basic human rights, the right to life, or animal rights (European Commission 2014h; European Commission 2014f; European Commission 2015i). All three campaigns had a strong ethical or moral focus, in line with the reflections of Simona Pronckute from the Fraternité 2020 ECI that the topic of an ECI should be “something that many people are very emotional about, it is also about the moral and ethics” (Pronckute, interview). It is also significant to note that between the launch of the ECI and February 2014, 90 percent of signatures collected by all ECI campaigns were collected by the three initiatives that collected over 1 million signatures (Berg & Glogowski 2014, p.14). Whilst the right to water, right to life and rights of animals are not considered democratic rights, so these campaigns are not at risk of undermining political equality and democratic legitimacy in the EU, it can be speculated that use of the language of rights within an ECI campaign might result in increased salience of the issue and success in terms of inclusion and impacts than campaigns that do not use the language of rights.

Indeed, arguably the most successful, though unofficial⁴⁸, ECI, the ‘self-organised’ campaign to stop the signing of the Trans-Atlantic Trade and Investment Partnership (TTIP), expressly

⁴⁸ The Stop TTIP initiative, which asks the Commission to cease its negotiations with the United States and Canada (on the CETA trade agreement), was refused registration by the Commission in September 2014 due to the issue being manifestly outside the Commission’s powers. The citizens’ committee

frames itself in terms of advancing the interests of all EU citizens *against* the interests of big corporations within and outside Europe (Stop TTIP 2015b). Campaigning for the protection of European democracy, labour rights for EU citizens, and increased consumer protection, and against exponential privatisation and liberalisation and what they see as excessive rights for business interests, the Stop TTIP campaign collected over one million signatures of support in the first two months of the campaign and after nine months collected over 2.2 million statements of support, meeting the minimum thresholds in half of the member states, eventually submitting more than 3.2 million signatures to the Commission after one year of signature collection (Stop TTIP 2015a; Stop TTIP 2015b; Zalan 2015). The example of the Stop TTIP campaign further supports the argument that ECIs framed in terms of rights and the common interest of the average citizen are likely to motivate extensive support, facilitating inclusion, and have significant levels of success when it comes to signature collection, in the realm of impacts.

In terms of normative justifiability of the issue with regard to the upholding of democratic rights and recognising political equality, furthermore, the Stop TTIP ECI states explicitly that the organisers object to what they perceive as the undemocratic nature of the TTIP negotiation process. The conduct of the TTIP negotiations is deemed undemocratic because it is not open to public scrutiny and the people are not entitled to see the negotiated texts until the close of the process (Stop TTIP 2015b). It is possible to argue that in this instance the small group of individuals participating in the TTIP negotiations are considered to have superior knowledge as to what is in the best interests of all citizens, in relation to the outcome of the trade negotiations: an argument that I have shown potentially to be incompatible with democratic legitimacy which places the authority for political outcomes with the people, and all of the people. Christiano reminded us that it is not possible that all would agree that elites have

decided to proceed with the campaign and signature collection despite not being officially registered with the Commission in the first 'self-organised' ECI campaign.

knowledge of the interests of others better than the others themselves do (2009, p.238). Therefore by using the ECI, albeit unofficially, to campaign for the protection of democratic rights for EU citizens, in order for them to have the opportunity to access information about the potential political outcome of the TTIP negotiations and to have their interests considered in the process, we can see the potential for the ECI to be used to pursue normatively justifiable outcomes that uphold the rights of the citizens necessary to participate in the democratic process.

Issue salience

The second key way in which the nature of the issues pursued through the ECI affect its ability to impact upon democratic legitimacy is through the concept of issue salience. Issue salience is a popular concept discussed in literature related to voting behaviour and other indicators of participation and decision making, yet, as with many other important concepts in political science, it is rarely defined. When attempts are made to provide a definition, as Wlezien summarises, there is “little consensus about what the word means: it means different things to different people and nothing in particular at all to others” (2005, p.557). In broad terms, however, issue salience is used to refer to the relative significance or importance of an issue in the minds of relevant actors (Opperman & de Vries 2011, p.3). It concerns the prominence of the issue in peoples’ minds, the level of attention paid to it, or the weight individuals attach to it (Repass 1971; Opperman & de Vries 2011; Wlezien 2005). While it is difficult to define issue salience, it is usually operationalised using survey questions such as ‘what is the most important problem facing you/your community/your country at the moment?’ (Wlezien 2005, p.557), or the amount of attention paid to a particular issue in the mass media, which, as already highlighted in chapter six, can indicate how prominent it is within the public debate more broadly (Opperman & de Vries 2011, p.14). There is likely to be increased public debate and media attention surrounding issues that are salient in the minds of the people: the more

media attention and discussion an ECI campaign reflects or generates, the higher the salience of its issue is likely to be. Links can, and should, be drawn here with the discussion in chapter six of the relationship between the public agenda and the legislative agenda, and the role of the media in transmitting issues between the two. However, whilst that discussion considered the potential of the ECI in terms of its practical design and functioning to generate discussion and debate, here the focus is on how the issues pursued through the ECI themselves affect its ability to impact on the democratic legitimacy of the EU.

It is important to recognise that the higher the salience of a given issue, the more likely that issue will be acted upon as individuals become increasingly motivated to express their preferences. As Weaver summarises,

“increased salience of an issue is accompanied by increased knowledge of its possible causes and solutions, stronger opinions, less likelihood of taking a neutral position, and more likelihood of participating in political behaviour such as signing petitions, voting, attending meetings, or writing letters.” (1991, p.66)

This relates to the idea of tipping points and threshold effects for political mobilisation as identified by Margetts et al. and raised in chapter six: when an issue reaches a certain level of salience and is acted on by a certain number of individuals, Margetts et al. suggest one million, the participation of others on that issue or through that means is increasingly likely (2011, p.325). Opperman and de Vries also found that “policy outcomes are most consistent with public preferences in cases of high issue salience” and are more likely to emerge from bottom up processes when the issue is salient (2011, p.6). In a similar vein, Parkinson found that where a deliberative event was linked to an issue that had already gathered public attention and concern and clearly led to a decision making moment, it attracted additional media coverage further enhancing the public debate around the issue and increasing its salience (2006, p.122). It may be reasonable to suggest, therefore, that ECI campaigns that are related to issues already salient in the minds of the public are more likely to have positive effects in terms of both the inclusion and impact criteria of democratic legitimacy. Where an issue is salient, it is

prominent in the minds of many people, thereby increasing the likelihood that they will be aware of the ECI and participate in EU policy making through it, in turn increasing its effect on inclusion in EU policy making. Increased salience also likely means increased discussion and debate and opportunities for tangible policy outcomes, in terms of impacts.

Advice from an organiser of the Fraternité 2020 ECI, to “see if there are any debates at national or European level about this” in advance of launching an ECI (Pronckute, interview), and asking “is this a public issue, is it already being discussed in EU policy?” as recommended by Sanchez from the Right2Water citizens’ committee (Sanchez, interview), suggests that the importance of issue salience in this regard is understood amongst campaigners. There are, however, different ways in which issues can be salient that can affect the ECIs’ effects on inclusion and impact, including the level of the salience (national or transnational), where (geographically) the issue is salient, who it is salient amongst, and whether the salience is a consequence of controversy.

First, in terms of salience at national and transnational levels, in the case of Right2Water, for example, water privatisation had already become salient in some EU member states prior to the launching of the ECI. In Italy, a campaign against a law that privatised water services in 2011 collected over 1.4 million signatures, and triggered a national referendum on whether to repeal the law that had entrusted the management of local public services to the private sector. On 12 June 2011, almost 26 million Italian citizens, over 95 percent of those who turned out to vote (turnout was 55 percent), voted in favour of repealing the law (Unknown 2011). Italian citizens were therefore very familiar with the debate around the privatisation of water services and had already acted to prevent this at the national level: it was a salient issue for them.

Water privatisation was also a salient issue in Germany and Austria where it had received significant media coverage both before and during the ECI campaign. A report on German

television on water privatisation caused significant snowball effects for signature collection: more than one million signatures in support of the ECI were collected in Germany and online within the eight week period following the documentary on ZDF (Berg & Glogowski 2014, p.15), and in January 2013 a popular German comedian, Erwin Pelzig, spoke out on German TV in support of the Right2Water ECI (Van den Berge 2014, p.21; das haku 2013). Following the television attention for the issue of the right to public water in Germany, signature collection for the ECI increased significantly in Germany and Austria (Kaufmann & Berg 2013, p.17). In Spain additionally there had been increasing moves towards privatisation that triggered many local citizen-led actions to bring municipalisation back to the political agenda (motivated in part by the Right2Water ECI, as discussed in chapter six) (Sanchez, interview). All of these examples show how the Right2Water initiative was able to build momentum for its campaign from the salience already surrounding the issue of water privatisation at the member state level within Europe, which certainly contributed to the success of the campaign at the signature collection phase at the transnational level. As stated by ECI campaigners Bruno Kauffman and Carsten Berg, “the conclusion is that an ECI takes off if it is connected with current issues that have a national impact and are covered by the national mass media” (2013, p.20): the ECI has the potential to elevate issues that are already salient in the national arena to salience, and perhaps impact, at the European level.

However, it has also been noted that the success of the Italian referendum in 2011 may have actually hampered the Right2Water ECI’s efforts to collect the required number of signatures there. As citizen-initiated referendums in Italy culminate in the popular vote stage and are binding, citizens may feel that their signatures can have a real impact on outcomes when compared to the non-binding and one-step nature of the ECI. In addition, Italian citizens potentially felt that they have already successfully dealt with the issue of water privatisation at the national level and no longer need to act in its regard, as Sanchez noted, Italian signatories to the ECI were sceptical and had already “kind of used the gunpowder for the national

referendum” (Sanchez, interview). Therefore, where an issue is so salient at the national level that political action has already been taken in relation to it, the collection of the necessary signatures in an ECI campaign may prove more difficult. Where issue salience generates political action at the national level it may undermine the production of salience around the issue at the transnational level.

A similar effect was felt by the One Single Tariff campaign, though here the issue was already salient at the European level and not just at national levels. The success of the One Single Tariff initiative in terms of its direct impact on the progress with the regulation on roaming on public mobile communications networks within the EU (European Union 2012) can also be attributed to the fact that roaming charges were a salient issue both for citizens and politicians at the time the campaign was launched (Chauvet, interview). Roaming charges is an issue that affects a significant proportion of the population of the EU and reportedly gathered media attention from outlets in Lithuania, Estonia, Belgium and France. Reflecting on why this did not translate into signatures for the campaign, the chair of the citizens’ committee stated that what is really necessary is to have primetime television coverage, as was the case with the Right2Water initiative (Chauvet, interview). However, as the issue was already salient in the minds of the European politicians, having been debated and acted upon incrementally since 2007, and with the demands of the ECI being met in the Commission’s 2013 proposal for a Regulation of the European Parliament and of the Council (European Commission 2013c), the necessary salience to invoke outcomes pre-existed the ECI campaign. Consequently, the level of pre-existing salience at the EU level did not necessarily help the ECI campaign with its signature collection, though the campaign did nonetheless contribute towards significant impacts, as discussed in chapter six.

Second, in terms of salience geographically, if the issue at hand is salient in only one or two member states it is likely to be insufficient to contribute to the inclusion and impact of ECI

campaigns operating transnationally; the issue needs to have a general appeal beyond specific countries. The criterion of collecting the one million signatures from at least one quarter of EU member states was designed in order to ensure that the issues pursued have a minimal level of cross-EU interest and support, in addition to requiring the citizens committee to be formed of individuals from at least a quarter of member states (European Union, 2011). As de Lasteyrie reflected, “to make sure that the ECI would really cover a transnational matter, they went with this idea of the committee of seven citizens from seven member states” (de Lasteyrie, interview), and Lamassoure has also stated that the formation of the citizens’ committee in this way “is meant to ensure that the topic of an ECI is of EU-scale and interest” (2014, p.79). Thus far the only ECI proposal that would only have a country specific effect was with regard to the abolition of bullfighting, a past-time prevalent in Spain and Portugal, and this was refused registration by the Commission as animal welfare is not deemed to fall within the Commission’s competences (European Commission 2015f).

Third, amongst whom the issue is salient is significant. Broad appeal is important in terms of demographics: if an issue is salient only among a small or specific section of the public its effect is likely to be restricted. The need to have appeal beyond a specific section of citizenry was reported to be a hurdle for the Fraternité 2020 campaign. Representative of the citizens’ committee Simona Pronckute reflected that

“it was also difficult to reach how to say more adult people or to try to because we focused basically on social media, and on social media the natural group of the most active citizens are young people or politicians, journalists, stakeholders. So it was difficult to reach average citizens” (Pronckute, interview).

Whilst the issue of increased opportunities for European exchange programmes is not particularly controversial, it is likely to be salient primarily in the minds of those throughout Europe who have been on an exchange programme or are considering one in the near future, most predominantly students and young people. Its appeal chiefly to this demographic meant that the significance of the campaign did not reach large sections of EU citizenry making it very

difficult to collect the necessary support and affecting the levels of inclusion reached by this ECI campaign; the average citizen is unlikely to be roused into signing an ECI on this topic, particularly given the reported lack of citizen identification with the EU among the general population highlighted in chapter two (Pronckute, interview). The media coverage received by the Fraternité 2020 campaign was in no way insignificant, yet the type of outlets discussing it were mostly targeted at youth and student audiences or focused within the 'Brussels bubble', such as The European Federalist, an online magazine for Young European Federalists, and Aprendemas, a Spanish education blog, thereby affecting also the impact on discussion and debate generated by the campaign (Copetti, 2013; De Craecker, 2012; Pronckute, 2013; Pronckute, interview; Unknown, 2012b). Commenting on the successes and challenges of the Fraternité 2020 campaign, an organiser of the One Single Tariff ECI suggested that "maybe one of the reasons the ECI wasn't successful is that it did not open up broader than the small circle of EU bubble and EU pundits and academics related to the ECI" (Chauvet, interview).

A similar situation was recounted by the Let Me Vote campaign, which, calling for voting rights for EU citizens resident outside of their home country, had limited appeal to EU citizens not affected by the inability to vote in their resident country. The generally low turnout in elections to the European Parliament (just under 43 percent in the last two elections, 2014 and 2009, despite compulsory voting in four member states (European Parliament 2014)) suggests that the ability to vote in elections is not necessarily an issue that concerns the majority of the general public. ECI campaigns that are salient only at the national level, in certain member states or amongst certain demographic groups are therefore likely to find positive effects on inclusion and impact harder to achieve. Advice from Pronckute to those considering launching an ECI resonates here: "the topic should be something really innovative and also emotional and important almost to every single citizen from child to old" (Pronckute, interview).

Last, the nature of the salience around an issue is also likely to affect its effect on inclusion and impact, particularly if the salience is a consequence of the controversial nature of the campaign. For example, high levels of salience achieved due to a high level of controversy around an ECI campaign issue may decrease the chance that it has tangible impacts in terms of policy outcomes, yet increase the inclusion in policy making it can generate. A European journalist has highlighted that the three ECI campaigns that successfully collected over one million signatures were all controversial and polarising issues:

“Short of discussions about race, it is hard to think of issues that are better designed to polarise opinion one way or another. On abortion, the social conservatives are lined up against the social liberals, and the clerical against the anti-clerical. On water, the split will be between the economic liberals and the economic conservatives (who might be socialists in public-sector unions). On vivisection, animal-lovers will be arrayed against at least a part of the ‘scientific community.’” (Unknown 2014)

In a similar vein, Kaufmann reflected that the issue of the Fraternité 2020 campaign was too “nice” and insufficiently challenging to gather the required level of support, stating that the pro-Europe, pro-youth and pro-education issue was “simply too nice and too vague for most people to be persuaded to part with the personal information required when signing up” (2012a), an observation that rang true in terms of the numbers of signatures collected. Controversy may therefore create salience and positive effects on inclusion and impacts with regard to discussion and debate.

This links to the point made above regarding the ECI’s lack of an avenue for official opposition to the campaign issue in comparison with other citizens’ initiatives (mostly those that culminate in a popular vote). As already noted, where there is scope for formal opposition to the issue in the initiative to be formed a much greater level of discussion and debate around the issue of concern is generated. The One of Us campaign collected 1.8 million signatures in support and certainly concerned a very controversial issue. As such, a counter campaign that emphasised the rights of the mother over the rights of the embryo, counter to the One of Us

objectives, may have had the potential to collect even more signatures than One of Us. As Sanchez suggests, for campaigns with a controversial issue “you could have an anti-ECI for another ECI” (Sanchez, interview). If there was therefore scope for official opposition to the campaign, the One of Us ECI could potentially have generated significant discussion and debate in terms of impact. However, whilst the One of Us campaign was able to draw on strong existing national movements and had the express support of Pope Benedict and Pope Francis, it did not receive much in the way of media attention (Del Pino 2014, p.26). The issue of embryo rights was highly salient amongst the Catholic populations but not beyond, again raising the question of amongst whom the issue is salient affecting the effect on inclusion and impact of the campaign.

A similar claim is true of the Stop Vivisection initiative, which faced a strong counter campaign from the academic and scientific lobby: a statement prepared by the Wellcome Trust asking the European Commission and European Parliament to oppose the Stop Vivisection ECI received signatures from 167 organisations including universities, medical research groups, medical charities and other stakeholders throughout Europe (Wellcome Trust 2015). This likely affected the Commission’s decision not to generate a legislative proposal on the basis of the campaign. Resistance to the One of Us campaign also came from inside the EU’s institutions. Finnish MEP Sirpa Pietikäinen of the European People’s Party spoke out against One of Us ahead of the Commission’s official response, arguing that acting on the ECI would seriously hamper the EU’s efforts in reducing pregnancy and childbirth related deaths around the world, stating that

“the proposal is totally at odds with EU’s longstanding development aid policy and threatens the viability of approximately \$120 million in EU development aid that is currently spent each year to protect maternal and reproductive health.” (Pietikäinen 2014)

The issue was sufficiently salient that it caught the attention of politicians, but this does not mean it attracted their support. As the *Politico* journalist concluded,

“when the people are so polarised, there is no way that the Commission can hope to satisfy all sides. In each case, whatever decision it comes to – to propose legislation or not – it is doomed to disappoint.” (Unknown 2014)

It might thus be that in cases where the Commission is presented with a polarised or controversial ECI it will be inclined to stick with the status quo, that is, not proposing new legislative action, in order to avoid generating any additional controversy. The controversial nature of these campaigns therefore, whilst probably contributing to their salience and inclusion likely decreased their levels of success in terms of generating tangible direct impacts.

Thus whilst issue salience is an important factor affecting the extent to which ECI campaigns can generate inclusion and impact, the ways in which the issue is salient can determine this relationship. Salience at the national level can be transmitted to the EU level by the ECI, though if this national level salience is significant it may limit the extent to which the ECI can generate inclusion at the EU level. Issues already highly salient at the EU level may not fare well as ECI campaigns given the likelihood that they are already being acted upon, so the issue may have clear direct impacts in terms of policy outcomes but fare badly at increasing inclusion in EU policy making and generating discussion and debate. Salience in some member states but not others or amongst select demographic groups is also likely to mediate the effects of issue salience on inclusion and impacts of ECI campaigns: levels of inclusion reached are likely to be limited where an issue is salient only amongst select groups of people from select countries, and consequently direct impacts on agenda setting and discussion and debate will likely be minimal. Finally, salience due to controversy is likely to increase the generation of discussion and debate around an ECI campaign though potentially hinder its likelihood of resulting in policy outcomes.

Conclusion

As highlighted early on in this thesis, procedures alone are insufficient to ensure a positive impact of a particular institution on the overall democratic legitimacy of a political system. In

this chapter I have highlighted how the nature of issues pursued in an institution such as the ECI can affect its impact on the democratic legitimacy of the European Union, and I have identified two key ways in which this is the case.

First, the normative justifiability of the issue at hand in an ECI campaign can, I have argued, significantly affect its ability to impact upon the democratic legitimacy of the EU. By identifying the proper ends of government with the upholding of the political rights of all, consistent with the principle of political equality and facilitating the participation of all in the democratic process, I note how ECI campaigns that use the language of rights have been the most successful campaigns in terms of signature collection thus far (Right2Water, One of Us, Stop Vivisection as well as the unofficial ECI Stop TTIP). Furthermore, the Stop TTIP unofficial ECI has been the most successful in terms of signature collection and salience and has the specific objective of upholding and enhancing democratic rights in the EU. To summarise, consistent with the definition of democratic legitimacy, it is not only the procedures of the ECI that matter when considering its impact on the democratic legitimacy of the EU, but the nature of the issues that it is used to pursue is also significant.

The salience of the issue that is pursued through an ECI campaign can also, I have argued, have a significant effect on the extent to which that campaign can affect inclusion and impact, thereby contributing to the legitimacy of the outputs of the mechanism. Whilst the general impression is that greater salience, in terms of media attention as well as public and political activity, leads to greater impacts, the ECI case studies have shown how there are several nuances to the concept of salience that affect how this relationship works in practice. First, issues that are salient at the national or EU levels to the extent that political action has already been taken on them are likely to find subsequent signature collection difficult, as demonstrated by the Right2Water campaign in Italy given the success of the 2011 referendum on water privatisation and the limited success of One Single Tariff in terms of signature

collection given the salience of the issue of roaming already in the minds of EU politicians who had begun acting upon it. Second, issues that are salient only amongst certain demographic groups or in certain geographic areas are likely to have less of an effect on inclusion and lower levels of impact than issues with a broader appeal. Finally, issues that are highly controversial are likely to achieve high levels of salience which translates into the inclusion of greater numbers in policy making at the EU level and greater levels of discussion and debate, yet is much less likely to result in tangible outputs from campaigns, as the One of Us ECI and the case of Stop Vivisection highlight. Issue salience and normative justifiability of the issues pursued therefore affect the extent to which ECIs can impact upon the democratic legitimacy of the EU, though it should be remembered issues are a necessary yet not sufficient criterion.

Chapter 8: Conclusion

The preceding discussion allows some conclusions to be drawn as to whether the ECI can live up to the optimistic expectations of the EU institutions towards the ECI around the time of its launch in 2012, or whether the despair and frustration of some of those same institutions and commentators in 2015 is warranted. The findings presented throughout this thesis, in relation to the three analytic criteria, have shown that despite the significant amounts of (often justified) scepticism regarding the democratising potential of the ECI, it does provide opportunities for enhancing the democratic legitimacy of the EU in a variety of ways. Indeed, from the perspective of whether the ECI is performing as the Regulation dictates it should, the scepticism towards the ECI's potential during the 2015 review is warranted. However, I have identified several broader, unintended or unanticipated outcomes or impacts of the ECI that suggest the potential for the ECI to have a positive, albeit limited, impact on the EU's overall democratic legitimacy. In this concluding chapter, I reflect on the underlying research questions of this thesis and summarise how this overall conclusion in response to the central research question has been reached. Finally, I identify how this research has contributed to advancing scholarly debates relating to the ECI, the EU's democratic deficit and the evaluation of democratic innovations, before highlighting some viable avenues for future research that could strengthen and enhance the findings of this thesis.

The underlying research questions

The underlying research questions highlighted in the introduction have been addressed in order to reach this conclusion. Democratic legitimacy was defined as the legitimate exercise of political authority, conceptualised as a system that recognises the people as the appropriate source of authority, considers the protection of democratic rights to be the appropriate ends of government, and gives the people the opportunity to consent to the exercise of their own

authority and hence expects them to accept its outcomes. Within this definition it should be emphasised that democratic legitimacy has both a procedural (inputs) and substantive (outputs) element, as procedures alone are insufficient to ensure the democratic legitimacy of the system, though procedures are logically prior to outputs.

In terms of the second underlying research question, of how democratic legitimacy can be operationalised to facilitate research into its quality, deriving from the definition offered chapter three identified three distinct criteria that can determine the extent to which an institution or innovation can affect the democratic legitimacy of the system in which it is embedded: inclusion, impact and issues. Inclusion derives from the democratic premise of political equality and the people as the source of authority. If a democratic mechanism is to enhance the democratic legitimacy of a political system, it must positively contribute to the overall inclusion of the system, as all citizens of the system must be considered equal and have an equal opportunity to participate and influence political outcomes. Whether or not the innovation allows for an influence on political outcomes is encapsulated in the second criterion of impact, whereby in order to positively affect democratic legitimacy the institution must have observable effects, whether direct in terms of on policy making or indirect to the participants themselves. Lastly, and moving on from the procedural aspects of democratic legitimacy to the more substantive, the issues pursued through the innovation are also significant for its capacity to influence democratic legitimacy. First, normatively justifiable issues are able to have a greater effect upon the democratic legitimacy of a political system in which they are pursued than those advocating niche interests (Beetham 1991; Scharpf 1999; Gutmann & Thompson 1996). Second, the salience of the issue affects whether it is likely to make a difference in terms of the criteria of inclusion and impact.

Each of the criteria is logically prior to the next, in the order inclusion, impact and issues. This is because if the innovation does not facilitate inclusion, any impacts it can have will be of

questionable democratic legitimacy as they cannot be deemed to derive from the people as the appropriate source of political authority, given the equality principle. Similarly, if an instrument is unable to have any impacts, whether or not the issues it considers are normatively justifiable or salient becomes irrelevant, particularly if the institution does not facilitate inclusion in the first place. Still, considering the influence of a democratic instrument on all three criteria from a systemic perspective, that is, realising that the particular combination of different elements and institutions in a political system determines its level of democratic legitimacy, as some combinations can enhance and others can detract from this, and taking into consideration the formal and informal relationships between the elements of the system, enables the evaluation of the impact of one innovation on the democratic legitimacy of the whole system. The context-neutral nature of these criteria, and the way that they derive directly from the definition of democratic legitimacy and not from any particular 'ideal' model of democratic legitimacy based on a specific institutional arrangement makes them appropriate for any context, including the complicated case of the EU.

The third underlying research question was thus what is the status quo of democratic legitimacy in the EU, as this is important to establish in order to evaluate how the ECI can affect it. Chapter two addressed this question, reviewing the existing discussion regarding the EU's democratic deficit. Whilst most scholars view the democratic deficit in terms of either a deficit of legitimate inputs or outputs, I argued that the two are closely linked, but inputs are logically prior to outputs. The EU is significantly lacking in democratic inputs into the system, meaning the quality of its outputs are also questionable in terms of democratic legitimacy. I also raised the recent addition of democratic throughput as a significant contribution to the debate that should be considered.

Most of the solutions to the problem of democratic legitimacy in the EU that have been offered so far struggle because they focus on a particular institutional incarnation of democratic

legitimacy: that seen in most democratically legitimate nation states, which is inapplicable to the EU system. The ECI represents the EU's first serious attempt to facilitate direct citizen participation in its policy making, following many years of stating its intention to explore this approach to rectify the democratic deficit and improve democratic legitimacy (beginning with the Commission's White Paper on European Governance (2001)).

The wider context in which the ECI was introduced and has been functioning in its first three years is also significant. It has been noted that the EU is in a state of crisis, more specifically, *democratic* crisis surrounding and following the Eurozone crisis. The EU's reaction to the financial and economic crisis of the Eurozone, in terms of its technocratic approach and empowerment of the European Central Bank, has placed additional pressure on the democratic legitimacy of the EU (Bellamy 2012, p.3; Schmitter 2012, p.40). More than ever the democratic legitimacy concepts of the people as the source of authority and determiners of the rules of authority in the EU are struggling, and this is the context in which the ECI has been introduced and functioning in its formative years. This context is thus highly significant for the overall conclusions of this thesis.

What is the potential impact of the ECI on the democratic legitimacy of the EU?

Summarising the findings of the preceding chapters provides an answer to the overall research question: what is the potential impact of the ECI on the democratic legitimacy of the EU? On paper, on the basis of Regulation 211/2011, the ECI appears to fare relatively well in relation to the three criteria of democratic legitimacy. In terms of inclusion, the right to participate in the ECI is advanced to all citizens of the EU (European Union 2011, p.1), that is, all citizens of the EU member states, thus is highly inclusive. There are no explicit exclusions to participation within the Regulation, and each and every signature in support of an ECI campaign is weighted equally, so that all participants are officially granted an equal voice to influence outcomes.

In relation to the second criterion, impact, the Regulation quite clearly locates the ECI's impact on the legislative agenda-setting stage of the decision making process, with no explicit role for it in the discussion and debate, decision making or implementation stages. The ECI is intended to allow the citizens of the EU to place issues of concern to them on the Commission's legislative agenda, though significantly the Regulation does stipulate that ECIs can only *invite* the Commission to launch a legislative proposal, as it retains its agenda setting power and capacity to refuse to act on a successful initiative (European Union 2011, p.3).

The Regulation has little to say regarding the ECI's influence on the third criterion of issues, other than that the issue of the campaign must fall within the Commission's competences. Yet what exactly is meant by 'manifestly outside' its powers is open to interpretation (ECAS 2014, p.4). Furthermore, the inclusion of the Charter of Fundamental Rights, which includes several of those political rights essential to the democratic process, within the EU's treaty framework, coupled with the assertion that ECIs must comply with the treaties, leaves little room for an initiative issue to undermine these political rights. The ECI Regulation thus sets out the opportunity for all citizens of the EU to influence the EU's legislative agenda in a normatively justifiable way, and therefore on paper the ECI has the potential to positively impact upon the democratic legitimacy of the EU.

It is in practice however that doubts emerge about the practical capacity of the ECI to have the influence on democratic legitimacy that the Regulation allows for. There are several limitations in terms of inclusion, including: confusion over the concept of European citizenship and an EU demos; a lack of understanding of EU citizenship and the rights that confers on citizens amongst the people of the EU, including limited knowledge of the existence of the ECI (European Commission 2014d; European Commission 2014g; European Commission 2013a; Ghergina & Groh 2015); and the asymmetric application of citizenship rights in different member states (Austria grants rights to all over the age of 16, whereas in the rest of the EU

member states the rights are reserved for all of those over 18). Also, whilst there are no explicit exclusions to participation in practice many implicit exclusions appear. The Regulation is applied inconsistently throughout the EU member states and as a consequence significant numbers of citizens are disenfranchised from participating, such as citizens of one member state where participation is open to all residents residing in another member state where participation is open to all citizens (Anglmayer 2015, p.3; Kaufmann & Berg 2013, p.20). Citizens who are protective of their personal data are, furthermore, disincentivised from participating due to the often stringent personal data requirements in some member states (Anglmayer 2015, p.18; The ECI Campaign 2015, p.5).

The financial and organisational burdens of organising and launching an ECI also implicitly exclude ordinary citizens who do not have the required resources and knowledge from doing so, and consequently the ECI may be primarily a tool for the use of already existing CSOs and networks to advance their interests at the EU level. A consideration of the campaign case studies used throughout the thesis supports these disheartening claims. The unequal weighting of signatures in large and small member states due to the calculation of the thresholds for signature collection in order to count amongst the seven member states implies that each signature may not in fact have an equal influence on outcomes, yet there is limited evidence to suggest that this potential inequality has been exploited by the ECI campaigns. In practice there are certainly reasons for doubt about the ECI's capacity to positively affect the democratic legitimacy of the EU in terms of inclusion.

With regard to impact, doubts also emerge since the ECI has not had the influence that the Regulation intended it to. There is no evidence that the ECI has influenced the Commission's legislative agenda setting, as it is reasonably expected it would, given the wording of the Regulation. The Commission has retained firm control over the EU's legislative agenda, seemingly arbitrarily deciding which proposed ECI campaigns to register and which to refuse,

and failing to make any legislative proposals on the basis of those ECI campaigns that have successfully met the minimum thresholds to be considered by the Commission. In practice the ECI has not had any impact in the form that the Regulation led many to expect, thereby garnering much disappointment. In terms of the issues pursued in ECI campaigns, in practice many have been highly salient and indeed the most successful (albeit unofficial) ECI in terms of signature collection explicitly sought to enhance democracy within the EU, rendering it normatively justifiable. However, the polarising nature of the three officially successful campaigns likely contributed to the unwillingness of the Commission to act upon them: there is likely to be therefore a delicate balance of issue salience necessary for a successful campaign, though the more normatively justifiable an issue the greater the positive impact on democratic legitimacy in the EU. Therefore, in practice, it is not difficult to see why the capacity of the ECI to affect positively the democratic legitimacy of the EU has been doubted, especially in terms of inclusion and impact, and the scepticism around the ECI during the review period appears justified.

However, when the broader, more systemic view is taken, reasons for optimism appear. On the criterion of inclusion, recent developments in representation theory suggest the possibility that privileging the participation of pre-established organisations and networks with sufficient finances and resources to launch and run a campaign need not be a reason for negativity, and evidence from the case studies used throughout the thesis supports this possibility in practice. Through making claims to non-elected representation, the organisations can bring into existence *demos* of EU citizens with a common interest in a common issue and who can pursue that interest through the avenue of the ECI. The ECI could therefore facilitate a positive influence on the democratic legitimacy of the EU as it enables the formation of issue-specific, temporary and flexible *demos* on which the EU's democratic legitimacy can be based and provides a viable avenue for the *demos*, defined using the democratic agency criterion as I have advocated, to pursue their issue of concern. Furthermore, in practice various ECI campaigns

have demonstrated effects on stages of the decision making process aside from the agenda-setting stage as expected by the Regulation. Looking beyond the formal legislative agenda, the potential for the ECI to generate discussion and debate, getting the issues onto the public agenda, has been seen. However, it remains the case that the lack of European media outlets means that discussion and debate is held mostly at the national or local level. Still, several campaigns have made use of online campaigning and social media to raise awareness of the ECI, to a limited yet not insignificant level of success. There is also some limited evidence of ECI campaigns impacting on the decision making and implementation stages of the process, particularly Right2Water and One Single Tariff.

I have also highlighted the indirect impacts of the ECI, which are not accounted for in the Regulation. As participation in ECI campaigns can breed participation through other avenues and at different levels of governance, the broader positive effects of the ECI on democratic legitimacy within the EU can be seen: local level protest movements inspired by the ECI have been reported in many EU member states.

Furthermore, the issues pursued through ECI campaigns, if normatively justifiable, can enhance the democratic legitimacy of the EU by upholding the democratic rights of all citizens, recognising their political equality and facilitating their participation in the democratic process. Where issues are salient, moreover, they can have an enhanced effect on the inclusion and impact criteria, though, as I have argued, the nuances of salience determine the precise effect it can have. These broader effects of the ECI, outside those envisaged by the Regulation, enable a more optimistic answer to the question of what impact the ECI can have on the democratic legitimacy of the EU than is offered by an assessment purely of how the ECI is functioning with regard to the Regulation.

It is possible to see, therefore, how the buoyant optimism towards the ECI in its early days was justified, as it was necessarily centred on the contents of the Regulation, and the Regulation

provides little reason to doubt the potential impact of the ECI on the democratic legitimacy of the EU in terms of the three criteria I have identified. It is also not difficult to see how over the first few years of the ECI this optimism turned into scepticism and disappointment as the many practical limitations to the ECI's effect on the democratic legitimacy criteria of inclusion and impact in particular came to the fore. Viewed only from this perspective, it is not surprising that many commentators have expressed their despair over the functioning of the instrument. It is also the case, as I have identified throughout, that when compared with its namesakes elsewhere, the lack of a culminating decision making moment and space for formal opposition to the campaign affects the extent to which the ECI can be seen to have positive effects on inclusion, impact and issues. If stakeholders were expecting the ECI to perform similarly in terms of generating discussion and debate, attracting participation and having tangible impacts on outcomes, it is unsurprising that they would be disappointed with how the ECI has fared thus far. However, when a wider and more systemic approach to the question is taken, reasons for optimism about the potential impact of the ECI return. Effects of the ECI that are unanticipated or unexpected by the Regulation yet can be observed from its first few years of practice lead to the conclusion that the ECI can have the potential to impact positively upon the democratic legitimacy of the EU, though the size of the impact is at present likely to remain small.

Advancing debate

In reaching these conclusions, this thesis has contributed to advancing the debate about the effect of the introduction of the ECI into the EU. It offers a systematic analysis of the potential of the ECI mechanism to impact upon the democratic legitimacy of the EU, whether positively or negatively, which was previously lacking from the debate. Furthermore, it brings the academic discussion of the ECI up to date, as the pre-existing literature focused almost exclusively on the Regulation in principle and did not consider practical experience of the ECI

following the Regulation's implementation. Given the current period of review of the ECI and the multitude of views on how it ought to be modified or improved, this thesis presents a useful academic contribution to ongoing discussions amongst policy makers, stakeholders and commentators. In emphasising the significance of the unanticipated effects that indicate the potential positive influence of the ECI, I have provided an alternative view, incorporating a broader and slightly more optimistic picture than the status quo of current debate on the ECI, which is dominated by expressions of frustration and disappointment.

This thesis has also contributed to the ongoing debate regarding the EU's democratic deficit, its precise nature and what can be done to resolve it. Having highlighted how many of the existing contributions to debate have mistakenly compared the EU with nation state models of democracy, which are inappropriate for the distinctive features of the EU's transnational polity, the context-neutral and normatively-driven criteria of democratic legitimacy I have proposed provide an alternative way of evaluating democratic legitimacy in the EU. Furthermore, for those who advocated the ECI as part of the solution to the EU's democratic deficit, this research goes some way to addressing that question. In concluding that the ECI does have potential to have a slight overall positive influence on the democratic legitimacy of the EU in unanticipated ways, to some extent I support those who see the increased participation of EU citizens through the ECI as a boon for the EU's democratic legitimacy and part of the answer to deficit, particularly in this current context of crisis.

The criteria I have proposed for evaluating the ECI (inclusion, impact and issues) can also be said to advance debate over how to evaluate democratic innovations in a variety of contexts. I have demonstrated their applicability to the evaluation of the ECI as a participatory innovation in the EU, and also hinted throughout at how they could be applied to different types of referendums and citizens' initiatives in different political systems. The criteria I offer derive directly from the normative theory of democratic legitimacy and its core tenets, in contrast to

the more empirically concerned criteria of Smith (2009) and Beetham (1994). They do not relate to any specific institutional arrangement but can be applied to evaluate an innovation in any political system, as opposed to the EU-specific criteria used in Lord's democratic audit of the EU (2004), which are based upon the institutional arrangement he argues is most appropriate to the EU. The systemic approach undertaken when applying the criteria, in addition, provides an interesting way to appraise the effect of different elements of a system on its overall democratic legitimacy, not focusing solely on the individual institutions themselves, as advocated by Lord (2004, p.4) and Mansbridge et al. (2012).

Viable options for further research

As previously discussed, despite their capacity to contribute to debate in the ways just mentioned, the conclusions reached here are necessarily tentative and of an 'in principle' nature, leaving significant scope for further research. First, in terms of the ECI, more extensive research is necessary to build upon the conclusions drawn in this project. A few years from now a replicated investigation using the same criteria and approach as I have used here may yield different results, as with a longer timeframe for investigation the actual impacts of the ECI in practice may present themselves differently and lead to alternative conclusions. As the context of crisis hopefully subsides, the ECI's influence on the EU's democratic legitimacy may change in nature or scope. Furthermore, if the 2015 review of the ECI does indeed lead to a revision of the Regulation, as many hope and expect (Anglmayer 2015, p.6), the ECI could become a significantly different institution to the one that I have assessed here. It would therefore be a good idea to pursue further work tracing the impact of any revisions made to the Regulation or any natural evolution of the ECI instrument and evaluating how these may lead to alternative conclusions about the ECI's impact on the democratic legitimacy of the EU.

Additional research into a greater number of cases of ECI campaigns would also be beneficial to strengthening the external validity of the conclusions drawn, as the practical and time

constraints of this project restricted substantial investigation to the first four ECI campaigns registered by the Commission. These cases, it should be remembered, are illustrative and suggestive, and are not necessarily representative of the whole population of ECI campaigns. Whilst these limitations nonetheless contribute to the social relevance of my findings, alternative, later case studies may confirm or question the conclusions here, so conducting further research into the suggestions they make for the ECI's impact on democratic legitimacy would be advantageous. However the currently dwindling number of available cases for study (only six campaigns were registered by the Commission in 2015, one of which was withdrawn, and five the previous year (European Commission 2015d)) may make this further research difficult.

Further research using the analytic criteria I have advocated would also be beneficial for vindicating the criteria's internal validity, and for investigating the contributions to the EU's democratic legitimacy of other parts of the system. For example, applying the criteria of inclusion, impact and issues to the European Parliament would bring about additional contributions to debates about the EU's democratic deficit and the role of the Parliament in its resolution. Applying the criteria beyond the EU would also be an avenue for viable future research. An investigation of the contribution the increased use of referendums by the UK government make to the democratic legitimacy of the UK would, for example, be an interesting way to put the analytic criteria I have suggested here to further test and confirm that they are, as I have suggested, applicable in a variety of political settings.

In conclusion, this thesis provides an important contribution to debates about the impact, usefulness and influence of the EU's first formal foray into participatory democracy: the ECI. By systematically evaluating its potential effects on the EU's democratic legitimacy according to three normatively-driven and context neutral criteria, it has presented a reasoned and empirically supported response to the question of what the potential impact of the ECI actually

is, or could be. Whilst the scepticism of several MEPs (Schöpflin 2015b; Schöpflin 2015a), the European Council Presidency (Council of the European Union 2015), the Committee of the Regions (CIVEX 2015), and several stakeholders and journalists (Unknown 2014; Berg 2015), can be seen to be justified when the ECI's functioning in practice is contrasted with the expectations implicit in the Regulation underpinning the ECI, when considered from a broader, systemic perspective, significant, albeit small, positive effects that are unanticipated by the Regulation become apparent. These unanticipated consequences, which may be more pervasive and span longer timeframes than the individual campaigns themselves, lead to the overall conclusion that there is scope for the ECI to have a positive impact on the democratic legitimacy of the EU.

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Appendix 1: ECIs Registered by the Commission 1 May 2012 to 31 December 2015

| Status | Registration number | Name | Date of registration/refusal | Signature Collection Deadline | Reported funding | Signatures Collected | Notes |
|------------------------|---------------------|--|------------------------------|-------------------------------|------------------|----------------------|--|
| Registered | ECI(2012)000001 | Fraternité 2020 - Mobility. Progress.Europe | 09/05/2012 | 01/11/2013 | €7,000 | 70,412 | |
| Registered – Withdrawn | ECI(2012)000002 | Single Communication Tariff Act | 10/05/2012 | [withdrawn 03/12/2012] | - | - | Re-registered as ECI(2012)000016 |
| Registered | ECI(2012)000003 | Water and sanitation are a human right! Water is a public good, not a commodity! | 10/05/2012 | 01/11/2013 | €140,000 | 1,884,790 | Commission responded 19/03/2014 with no new legislative proposal. European Parliament voted 08/09/15 to ask Commission to propose relevant legislation. |
| Registered – Withdrawn | ECI(2012)000004 | EU Directive on Dairy Cow Welfare | 10/05/2012 | [withdrawn 20/07/2012] | €345,567 | 293,511 | |

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|------------------------|-----------------|---|------------|------------------------|----------|-----------|---|
| Registered | ECI(2012)000005 | One of us | 11/05/2012 | 01/11/2013 | €159,219 | 1,897,588 | Commission responded 28/05/2014 with no new legislative proposal. June 2014 appeal against Commission's response brought to General Court of the EU. |
| Registered - Withdrawn | ECI(2012)000006 | Let me vote | 11/05/2012 | [withdrawn 29/01/2013] | - | - | Re-registered as ECI(2013)000003 |
| Refused registration | n/a | Fortalecimiento de la participación ciudadana en la toma de decisiones sobre la soberanía colectiva | 30/05/2012 | - | - | - | |
| Refused registration | n/a | Recommend singing the European Anthem in Esperanto | 30/05/2012 | - | - | - | |
| Refused registration | n/a | My voice against nuclear power | 30/05/2012 | - | - | - | |
| Registered | ECI(2012)000007 | Stop Vivisection | 22/06/2012 | 01/11/2013 | €23,651 | 1,326,807 | Commission responded 03/06/2015 with no new legislative proposal. |
| Registered | ECI(2012)000008 | High Quality European Education for All | 16/07/2012 | 01/11/2013 | €17,000 | - | |

| | | | | | | | |
|----------------------|-----------------|--|------------|------------|--------|-----|--|
| Registered | ECI(2012)000009 | Pour une gestion responsable des déchets, contre les incinérateurs | 16/07/2012 | 01/11/2013 | - | 754 | ECAS suggests this ECI should not have been registered (ECAS 2014). |
| Refused registration | n/a | Abolición en Europa de la tauromaquia y la utilización de toros en fiestas de crueldad y tortura por diversión | 19/07/2012 | - | - | - | |
| Registered | ECI(2012)000010 | Suspension of the EU Climate & Energy Package | 08/08/2012 | 01/11/2013 | €2,500 | - | |
| Registered | ECI(2012)000011 | Central public online collection platform for the European Citizen Initiative | 27/08/2012 | 01/11/2013 | - | - | |
| Refused registration | n/a | Création d'une Banque publique européenne axée sur le développement social, écologique et solidaire | 06/09/2012 | - | - | - | |
| Refused registration | n/a | ONE MILLION SIGNATURES FOR "A EUROPE OF SOLIDARITY" | 06/09/2012 | - | - | - | Appeal against refusal brought to General Court of the EU. September 2015 General Court ruled in favour of the Commission's decision. |

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|------------------------|-----------------|--|------------|------------------------|----------|---------|--|
| Refused registration | n/a | Unconditional Basic Income | 06/09/2012 | - | - | - | ECAS suggests decision not to register this ECI was incorrect (ECAS 2014). Re-registered as ECI(2013)000001 |
| Registered - Withdrawn | ECI(2012)000012 | End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights | 01/10/2012 | [withdrawn 21/01/2013] | €2,291 | - | Re-registered as ECI(2012)000002 |
| Registered – Withdrawn | ECI(2012)000013 | European Initiative for Media Pluralism | 05/10/2012 | [withdrawn 20/08/2013] | €2,000 | 9,000 | Re-registered as ECI(2013)000007 |
| Registered | ECI(2012)000014 | 30 km/h - making the streets liveable! | 13/11/2012 | 13/11/2013 | €12,050 | 44,291 | |
| Registered – Withdrawn | ECI(2012)000015 | Kündigung Personenfreizügigkeit Schweiz | 19/11/2012 | [withdrawn 04/02/2013] | €150,000 | - | ECAS suggests this ECI should not have been registered (ECAS 2014). |
| Registered | ECI(2012)000016 | Single Communication Tariff Act | 03/12/2012 | 03/12/2013 | €2,000 | 145,000 | |
| Registered | ECI(2013)000001 | Unconditional Basic Income (UBI) - Exploring a pathway towards emancipatory welfare conditions in the EU | 14/01/2013 | 14/01/2014 | €2,580 | 285,042 | |
| Registered | ECI(2013)000002 | End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights | 21/01/2013 | 21/01/2014 | €3,324 | 105,740 | |

| | | | | | | | |
|------------------------|-----------------|---|------------|------------------------|---------|---------|---|
| Refused registration | n/a | Enforcing selfdetermination Human Right in the EU | 21/01/2013 | - | - | - | |
| Registered | ECI(2013)000003 | Let me vote | 28/01/2013 | 28/01/2014 | - | 3,604 | This ECI should arguably not have been registered since it requests a treaty change (Anglmayer 2015). |
| Registered | ECI(2013)000004 | Act 4 Growth | 10/06/2013 | 10/06/2014 | €12,500 | 1,052 | |
| Registered – withdrawn | ECI(2013)000005 | Teach for Youth -- Upgrade to Erasmus 2.0 | 17/06/2013 | [withdrawn 15/06/2014] | - | 563 | |
| Refused registration | n/a | Ensemble pour une Europe sans prostitution légalisée | 18/07/2013 | - | - | - | |
| Refused registration | n/a | Cohesion policy for the equality of the regions and sustainability of the regional cultures | 25/07/2013 | - | - | - | Appeal against refusal brought to General Court of the EU. |
| Refused registration | n/a | Stop cruelty for animals | 25/07/2013 | - | - | - | |
| Registered | ECI(2013)000006 | DO NOT COUNT EDUCATION SPENDING AS PART OF THE DEFICIT! EDUCATION IS AN INVESTMENT! | 06/08/2013 | 06/08/2014 | - | - | |
| Registered | ECI(2013)000007 | European Initiative for Media Pluralism | 19/08/2013 | 19/08/2014 | €2,000 | 200,000 | |

| | | | | | | | |
|----------------------|-----------------|--|------------|------------|---|---------|--|
| Refused registration | n/a | Minority Safepack – one million signatures for diversity in Europe | 13/09/2013 | - | - | - | Appeal against refusal brought to General Court of the EU. |
| Refused registration | n/a | To hold an immediate EU Referendum on public confidence in European Government's (EG) competence | 29/10/2013 | - | - | - | |
| Refused registration | n/a | Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right! | 05/11/2013 | - | - | - | ECAS suggests the decision not to register this ECI was incorrect (ECAS 2014). |
| Refused registration | n/a | Our concern for insufficient help to pet and stray animals in the European Union | 06/11/2013 | - | - | - | |
| Registered | ECI(2013)000008 | Weed like to talk | 20/11/2013 | 20/11/2014 | - | 169,791 | |
| Registered | ECI(2013)000009 | European Free Vaping Initiative | 25/11/2013 | 25/11/2014 | - | 181,555 | |
| Refused registration | n/a | The Supreme Legislative & Executive Power in the EU must be the EU Referendum as an expression of direct democracy | 23/01/2014 | - | - | - | |
| Refused registration | n/a | A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted | 23/01/2014 | - | - | - | |

| | | | | | | | |
|------------------------|-----------------|---|------------|------------------------|--------|-------|---|
| Registered - Withdrawn | ECI(2014)000001 | Turn me off | 03/02/2014 | [withdrawn 22/04/2014] | - | - | |
| Registered - Withdrawn | ECI(2014)000002 | New Deal 4 Europe - For a European Plan Special Plan for Sustainable Development and Employment | 07/03/2014 | [withdrawn 30/01/2015] | €2,000 | - | |
| Registered - Withdrawn | ECI(2014)000003 | MOVEUROPE | 24/03/2014 | [withdrawn 26/06/2014] | - | - | |
| Refused registration | n/a | Ethics for Animals and Kids | 26/03/2014 | - | - | - | Appeal against refusal brought to General Court of the EU. |
| Refused registration | n/a | Vite l'Europe sociale! Pour un nouveau critère européen contre la pauvreté | 05/08/2014 | - | - | - | |
| Refused registration | n/a | STOP TTIP | 10/09/2014 | - | - | - | Appeal against refusal brought to General Court of the EU. Proceeded to collect signatures as an 'unofficial ECI': after one year presented 3.2 million signatures of support to the Commission. |
| Registered | ECI(2014)000004 | Pour une Europe plus juste, neutralisons les sociétés écrans | 01/10/2014 | 01/10/2015 | - | 3,717 | |

| | | | | | | | |
|---------------------------|-----------------|---|------------|---------------------------|----------|----------------------|--|
| Registered | ECI(2014)000005 | For a socially fair Europe! Encouraging a stronger cooperation between EU Member States to fight poverty in Europe | 19/12/2014 | 19/12/2015 | - | - | |
| Registered - Withdrawn | ECI(2015)000001 | On The Wire | 09/02/2015 | [withdrawn 22/10/2015] | - | 131 [online only] | |
| Registered | ECI(2015)000002 | Fair Transport Europe – equal treatment for all transport workers | 19/09/2015 | 19/09/2016 | €322,000 | Ongoing | |
| Registered | ECI(2015)000003 | STOP PLASTIC IN THE SEA | 19/10/2015 | 19/10/2016 | €5,000 | Ongoing | |
| Registered | ECI(2015)000004 | Vi vill att WHO:s rekommendationer efterföljs. Cannabis ska bli avkriminaliserat med reglering. | 30/11/2015 | 30/11/2016 | - | Ongoing | |
| Registered | ECI(2015)000005 | Wake up Europe! Taking action to safeguard the European democratic project | 30/11/2015 | 30/11/2016 | - | Ongoing | |
| Registered | ECI(2015)000006 | Mum, Dad & Kids - European Citizens' Initiative to protect Marriage and Family | 11/12/2015 | 11/12/2016 | - | Ongoing | |

Information collated from ECI Support Centre (2015) and European Commission (2015b; 2015d; 2015f).

Appendix 2: List of Interviews

| Interviewee | Role | Date |
|--------------------------------|---|------------|
| Carsten Berg | Democracy activist and founder of The ECI Campaign | 23/09/2014 |
| Vincent Chauvet | Representative of Citizens' Committee for One Single Tariff ECI | 15/07/2014 |
| Olivia de Lasteyrie | Parliamentary assistant to Alain Lamassoure MEP | 11/09/2014 |
| ECI Task Force Member 1 | Member of the European Commission's ECI Task Force | 10/09/2014 |
| ECI Task Force Member 2 | Member of the European Commission's ECI Task Force | 10/09/2014 |
| Simona Pronckute | Representative of Citizens' Committee for Fraternité 2020 ECI | 22/07/2014 |
| Pablo Sanchez | Representative of Citizens' Committee for Right2Water ECI | 17/07/2014 |

Appendix 3: Interview information sheet and consent form



Project information sheet: **The impact of the European Citizens Initiative on Democratic Legitimacy in the EU**

Researcher: **Lucy Hatton**

Date: **September 2014**

You are invited to act as research participant for the above project. Your participation in this project is entirely voluntary. You may withdraw from participating in this project at any time, with no negative consequence to yourself or the organisation for which you work.

This is a research project investigating the potential for the European Citizens' Initiative (ECI) to impact upon democratic legitimacy in the EU. It asks how the ECI can interact with the pre-existing channels of democracy in the EU to create positive or negative outcomes for the democratic legitimacy of the system as a whole. The project considers the ECI against three criteria drawn from the democratic legitimacy literature: inclusivity, consequentiality and the extent to which it can contribute to 'good' policies and decisions.

The project involves a normative theoretical and empirical consideration of the ECI as a democratic innovation on paper and in practice. To collect the information needed to complete the project interviews with those involved in the ECI are being conducted in order to ensure that the varying perspectives on the ECI are accurately represented in the research and to establish a full understanding of the practical aspects of the process. Information is also being gathered from documentary sources such as legal documents, press releases and other available publications.

Participation in this project will involve being interviewed by the above named researcher on the theme of your experiences of being involved in and/or using the ECI. Your participation will significantly help the researcher achieve her objectives of presenting a well balanced, theoretically and practically informed evaluation of the ECI mechanism and its potential.

It is not expected that you will experience any risks through participating in this project. If requested, data will be anonymised and names or specific positions can be removed from the interview material. Your consent form will be stored in a locked office at the University of Warwick, and transcripts of interview data will be printed and stored in the same place. The transcripts will also be stored electronically on the lead researcher's password-locked laptop. All material will be destroyed after 10 years.

Should you have any further questions about this research, please contact Lucy Hatton (l.hatton@warwick.ac.uk). You may also contact the University Registrar's Office should you have any further questions or wish to make a complaint about the conduct of the researcher: J.Horsburgh@warwick.ac.uk.

RESEARCH PARTICIPATION CONSENT FORM

Title of Project: **The impact of the European Citizens Initiative on Democracy and Legitimacy in the EU**

Name of Researcher: **Lucy Hatton**

Name of Lead Supervisor: Professor John Parkinson

Date: September 2014

**Please
initial box**

1. I confirm I have read and understand the information sheet dated July 2014 for the above study. I have had the opportunity to consider the information, ask questions of a member of the research team and have had these answered satisfactorily. ☐
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason. ☐
3. I understand that my information will be held and processed for the following purposes: to be analysed by the researcher for the purposes of completing their PhD research and, where relevant, for the writing of associated academic journal articles or monographs. ☐
4. I agree to take part in the above named study and I am willing to discuss my experiences and respond to relevant questions, and to have our conversation recorded for research purposes. ☐

Name of participant

Date

Signature

LUCY HATTON

Name of Researcher

Date

Signature